

15.1 DEFINITIONS

Chapter IIIA was inserted in the Central Excise Act, 1944 with effect from 11-5-1999. This Chapter contains section 23A to section 23H setting out the provisions on advance ruling. Finance Act 2005 has renamed 'Authority for Advance Rulings' as 'Authority for Advance Rulings (Central Excise, Customs and service tax)'. The provisions relating to advance ruling have been summarised as under :

15.1.1 Advance ruling: Under section 23A(b) advance ruling means determination of question of law or fact regarding liability to duty in relation to an activity proposed to be undertaken.

15.1.2 Applicant: Section 23A(c) defines applicant to mean:

"applicant" means—

- (i) (a) a non-resident setting up a joint venture in India in collaboration with a non-resident or a resident; or
- (b) a resident setting up a joint venture in India in collaboration with a non-resident; or
- (c) a wholly owned subsidiary Indian company, of which the holding company is a foreign company, who or which, as the case may be, proposes to undertake any business activity in India;
- (ii) a joint venture in India; or
- (iii) 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,

and which or who, as the case may be, makes application for advance ruling under sub-section(1) of section 23C.

15.2 Central Excise

Here, “joint venture in India” means 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 a non-resident having substantial interest in such arrangement.

Thus, now in case of joint venture an application for advance ruling can be made only when one of the partners is non-resident.

Non-resident is assigned the meaning as in section 2(30) of the Income-tax Act, 1961 [section 23A(f)]. The collaboration would mean either technical or financial collaboration.

15.1.3 Authority: “Authority” means the Authority for Advance Rulings, constituted under sub-section (1), or authorized by the Central Government under sub-section (2A), of section 28F of the Customs Act, 1962.

15.2 PROCEDURE FOR APPLICATION FOR ADVANCE RULING

Under section 23C, advance ruling can be asked only for

- (a) classification of goods under the Tariff;
- (b) application of tariff notification issued under section 5A of the Act;
- (c) Principles to be adopted for purpose of determining value of goods.
- (d) notifications issued, in respect of duties of excise under the Act, the 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 Act.
- (e) 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 the excisable goods.
- (f) determination of the liability to pay duties of excise on any goods under the Act.

Apart from the above, no other matter can be referred for advance ruling. CBE&C has clarified vide Circular No. 779/12/2004 – CX dated 11.3.2004 that determination of a question as to whether a particular process amounts to manufacture is not within the scope of advance ruling.

It would also be noted that as per section 23D(2), applicants (whether resident or non-resident) who apply for such facility should not have the matter pending before the Appellate Tribunal or Court or if the same is already decided by Appellate Tribunal or

Court.

The applicant may withdraw the application within 30 days from date of application.
[Section 23C(4)]

An application fee of Rs. 2500/- is payable alongwith the application.

Under section 23F, advance ruling will be void if, on a representation from Commissioner or otherwise, it can be proved that it was obtained by fraud or misrepresentation of facts.

As per section 23E, it is binding only on the applicant who sought it for matters specified in section 23(C)(2) and on the Commissionerate in respect of the applicant. Change in the law or facts may however make the advance ruling obsolete.

15.3 CONSTITUTION OF AUTHORITY FOR ADVANCE RULING (CENTRAL EXCISE, CUSTOMS AND SERVICE TAX)

The Authority can formulate its own procedure. This Authority can examine people on oath and compel production of documents like a Civil Court under Code of Civil Procedure. It is a civil court for purposes of section 195 of Code of Criminal Procedure and proceedings are deemed to be judicial proceedings under section 193 and 228 of the IPC.

Under section 28F of the Customs Act, 1962, the authority shall consist of a Chairperson who shall be retired judge of Supreme Court along with officer of Indian customs and excise service qualified to be a Member of the Board and officer of Indian Legal Service qualified to be Additional Secretary to Government of India.

As per section 28F *supra*, the authority shall be situated at Delhi.

Under section 23D(5), the applicant can appear in person or through authorised representative as set out in section 35Q.

15.4 PROCEDURE TO BE FOLLOWED BY AUTHORITY FOR ADVANCE RULING (CENTRAL EXCISE, CUSTOMS AND SERVICE TAX) ON RECEIPT OF APPLICATION [SECTION 23D]

1. On receipt of application for advance ruling, the Authority shall forward a copy to the relevant Commissioner. The records shall be returnable after the ruling is given.

15.4 Central Excise

2. The Authority has the sole discretion to accept or reject the application. However, a hearing has to be given before rejection. Application is liable to be rejected in the following cases:
 - (i) where the question raised in the application is already pending before any Central Excise Officer, the Appellate Tribunal or any court; or
 - (ii) where the question raised is the same as in a matter already decided by any Appellate Tribunal or any court.
3. The Authority shall pass an order admitting or rejecting the application. A copy of such order should be given to the applicant and the Commissioner.
4. The Authority can further examine any material placed before it after admission of the application.
5. The Authority should pronounce the final order within 90 days of receipt of application.
6. Copies of the order have to be given to the applicant and the Commissioner.



Self-examination questions

1. State briefly as to who can make an application for “Advance Ruling” under section 23A of the Central Excise Act, 1944?
2. Enumerate the matters on which the advance ruling can be sought under the Central Excise Act, 1944.
3. Explain the circumstances when an advance ruling will be void under the Central Excise Act, 1944.
4. Discuss the procedure to be followed by the Authority for Advance Rulings on receipt of application for advance ruling.
5. Ramesh, a non-resident intends to manufacture certain excisable goods but has entertained some doubts about the admissibility of credit of excise duty paid on the goods used in the manufacture of the said excisable goods. He wants to seek an Advance Ruling on this issue under Chapter IIIA of the Central Excise Act from the Authority for Advance Rulings. Can he do so? Discuss.