

Chapter VB was inserted in the Customs Act, 1962 by Finance Act, 1999. The Finance Act, 1999 decided to set up an Advance Ruling Authority to give rulings on classification and valuation issues in advance for the benefit of joint ventures with NRIs. The provisions relating to Advance Rulings are contained in sections 28E to 28M. The provisions are summarised below:

14.1 DEFINITIONS [SECTION 28E]

- (a) “activity” means import or export;
- (b) “advance ruling” means the determination, by the Authority, of a question of law or fact specified in the application regarding the liability to pay duty in relation to an activity which is proposed to be undertaken, by the applicant;
- (c) “applicant” means a -
 - (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 28H.

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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.

The collaboration would mean either technical or financial collaboration. Joint venture would mean participation by both persons. Residents in the country having joint venture with other residents are not given the benefit.

- (d) “application” means an application made to the Authority under subsection (1) of section 28H;
- (e) “Authority” means the Authority for Advance Rulings (Central Excise, Customs and Service Tax) constituted under section 28F;
- (f) “non-resident” shall have the meaning assigned to it in clause (30) of section 2 of the Income-tax Act, 1961.

14.2 AUTHORITY FOR ADVANCE RULING (CENTRAL EXCISE, CUSTOMS AND SERVICE TAX) [SECTION 28F]

Sub-section (1) empowers the Central Government to constitute an Authority for giving advance rulings to be called “the Authority for Advance Rulings (Central Excise, Customs and Service Tax)”, by notification in the Official Gazette.

The Authority shall consist of the following Members appointed by the Central Government, namely:

- (a) a Chairperson, who is a retired Judge of the Supreme Court;
- (b) an officer of the Indian Customs and Central Excise Service who is qualified to be a Member of the Board;
- (c) an officer of the Indian Legal Service who is, or is qualified to be, an Additional Secretary to the Government of India [sub-section (2)].

The Central Government may authorise an Authority constituted under section 245-O of the Income-tax Act, 1961, to act as an Authority under this Chapter by issuing a notification. The provisions of this sub-section override the provisions of sub-section (1) and sub-section (2) [sub-section (2A)]. On and from the date of publication of notification under sub-section (2A), the Authority constituted under sub-section (1) shall not exercise jurisdiction under Chapter V-B of the Act [sub-section (2B)]. For the purposes of sub-section (2A), the reference to “an officer of the Indian Revenue Service who is qualified to be a Member of Central Board of Direct Taxes” in clause (b) of sub-section (2) of section 245-O of the

Income Tax Act, 1961 shall be construed as reference to “an officer of the Indian Customs and Central Excise Service who is qualified to be a Member of the Board” [sub-section (2C)].)

On and from the date of the authorization of Authority under sub-section (2A), every application and proceeding pending before the Authority constituted under sub-section (1) shall stand transferred to the Authority so authorised from the stage at which such proceedings stood before the date of such authorization [sub-section (2D)].

The salaries and allowances payable to, and the terms and conditions of service of, the Members shall be such as the Central Government may by rules determine.

The Central Government shall provide the Authority with such officers and staff as may be necessary for the efficient exercise of the powers of the Authority under this Act. The office of the Authority shall be located in Delhi.

14.3 APPLICATION FOR ADVANCE RULING [SECTION 28H]

The procedure involved in making an application for advance ruling is as follows:

- (1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and in such manner as may be prescribed, stating the question on which the advance ruling is sought.
- (2) The question on which the advance ruling is sought shall be in respect of the following:
 - (a) classification of goods under the Customs Tariff Act, 1975;
 - (b) applicability of a notification issued under sub-section (1) of section 25, having a bearing on the rate of duty;
 - (c) the principles to be adopted for the purposes of determination of value of the goods under the provisions of this Act.
 - (d) the applicability of notifications issued in respect of duties under the Customs Act, 1962, the Customs Tariff Act, 1975 and any duty chargeable under any other law for the time being in force in the same manner as duty of customs leviable under the Customs Act.
 - (e) determination of origin of the goods in terms of the rules notified under the Customs Tariff Act, 1975.
- (3) The application shall be made in quadruplicate and be accompanied by a fee of two thousand five hundred rupees.
- (4) An applicant may withdraw his application within thirty days from the date of the application.

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14.4 PROCEDURE ON RECEIPT OF APPLICATION [SECTION 28-I]

The following procedure is to be followed by the Advance Ruling Authority on receipt of an application for Advance Ruling.

14.4.1 Calling for relevant records: On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the Commissioner of Customs and, if necessary, call upon him to furnish the relevant records. Where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the Commissioner of Customs.

14.4.2 Allowing or rejecting the application [Sub-section (2)] : The Authority may, after examining the application and the records called for, by order, either allow or reject the application. However, the Authority shall not allow the application where the question raised in the application is –

- (a) already pending in the applicant's case before any officer of customs, the Appellate Tribunal or any Court;
- (b) the same as in a matter already decided by the Appellate Tribunal or any Court:

Further, no application shall be rejected under this sub-section unless an opportunity has been given to the applicant of being heard. It is also provided that where the application is rejected, reasons for such rejection shall be given in the order.

14.4.3 Copy of every order to be sent to Commissioner of Customs: A copy of every order made under sub-section (2) shall be sent to the applicant and to the Commissioner of Customs. [Sub-section (3)]

14.4.4 Pronouncement of Advance Ruling: Where an application is allowed under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority, pronounce its advance ruling on the question specified in the application. [Sub-section (4)]

14.4.5 Opportunity to an applicant of being heard: On a request received from the applicant, the Authority shall, before pronouncing its advance ruling, provide an opportunity to the applicant of being heard, either in person or through a duly authorised representative. [Sub-section (5)]

For the purposes of this section, "authorised representative" means a person authorised by the person referred to in sub-section (1) to appear on his behalf, being -

- (a) his relative or regular employee; or
- (b) a custom house agent licensed under section 146; or
- (c) any legal practitioner who is entitled to practise in any civil court in India; or
- (d) any person who has acquired such qualifications as the Central Government may specify by rules made in this behalf.

14.4.6 Time limit for pronouncing advance ruling: The Authority shall pronounce its advance ruling in writing within ninety days of the receipt of application. [Sub-section (6)]

A copy of the advance ruling pronounced by the Authority, duly signed by the Members and certified in the prescribed manner shall be sent to the applicant and to the Commissioner of Customs, as soon as may be, after such pronouncement.

14.5 APPLICABILITY OF ADVANCE RULING [SECTION 28J]

(1) The advance ruling pronounced by the Authority under section 28-I shall be binding only -

- (a) on the applicant who had sought it;
- (b) in respect of any matter referred to in sub-section (2) of section 28H;
- (c) on the Commissioner of Customs, and the customs authorities subordinate to him, in respect of the applicant.

(2) The 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.

14.6 ADVANCE RULING TO BE VOID IN CERTAIN CIRCUMSTANCES [SECTION 28K]

Where the Authority finds, on a representation made to it by the Commissioner of Customs or otherwise, that an advance ruling pronounced by it under sub-section (6) of section 28-I has been obtained by the applicant by fraud or misrepresentation of facts, it may, by order, declare such ruling to be void *ab initio* and thereupon all the provisions of this Act shall apply (after excluding the period beginning with the date of such advance ruling and ending with the date of order under this sub-section) to the applicant as if such advance ruling had never been made.

A copy of the order made under sub-section (1) shall be sent to the applicant and the Commissioner of Customs.

14.7 POWERS OF AUTHORITY [SECTION 28L]

The Authority shall, for the purpose of exercising its powers regarding

- discovery and inspection,
- enforcing the attendance of any person and examining him on oath,
- issuing commissions and compelling production of books of account and other records,

have all the powers of a civil court under the Code of Civil Procedure, 1908.

The Authority shall be deemed to be a civil court for the purposes of section 195, but not

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for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973, and every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code.

The Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure in all matters arising out of the exercise of its powers under this Act.

Self-examination questions

1. What is advance ruling? In what matters can the advance ruling be obtained?
2. State briefly as to who can make an application for advance ruling under the Customs Act, 1962?
3. Briefly discuss the provisions of the Customs Act, 1962 regarding rejection of an application for advance ruling.
4. Describe the procedure involved in making an application for advance ruling.
5. Vaikunth, a non-resident intends to import certain goods, but has entertained some doubts about their classification. Vaidehi, Vaikunth's friend, has obtained an 'Advance Ruling' under Chapter VB of the Customs Act, 1962 from the Authority for Advance Rulings on an identical point. Vaikunth proposes to adopt the same ruling in his case. Vaikunth has sought your advice as his consultant whether he could adopt the ruling given in the case of Vaidehi.

Explain with reasons.

Answer

5. According to section 28J of the Customs Act, 1962 the advance ruling shall be binding only on the applicant who has sought it.

In the given problem, in view of the aforesaid provision, Vaikunth cannot make use of the advance ruling pronounced in the identical case of his friend, Vaidehi. Vaikunth should obtain a ruling from the Authority of Advance Ruling by making an application under section 28H along with a fee of Rs.2,500.