Advance Ruling –Indirect taxes Giridhar's

Service Tax	Excise	Customs
Sections Applicable – 96A – 96I **96A**-Definitions. **96B**-Vacancies etc., not to invalidate proceedings. **96C**- Application for advance ruling. **96D**- Procedure on receipt of application. **96E**- Applicability of advance ruling. **96F**- Advance ruling to be void in certain circumstances **96G**- Powers of Authority **96H**- Procedure of Authority **96I**- Power to make rules	**Sections Applicable – 23A – 23H** **23A**-Definitions. **23B**-Vacancies etc., not to invalidate proceedings. **23C**- Application for advance ruling. **23D**- Procedure on receipt of application. **23E**- Applicability of advance ruling. **23F**- Advance ruling to be void in certain circumstances **23G**- Powers of Authority **23H**- Procedure of Authority	**Sections Applicable –28E-28M** **28E**-Definitions. **28F**-Authority for advance rulings **28G**-Vacancies, etc., not to invalidate proceedings **28H**-Application for advance ruling. **28I**-Procedure on receipt of application. **28J**-Applicability of advance ruling. **28K**-Advance ruling to be void in certain circumstances **28L**-Powers of Authority **28M**-Procedure of Authority.
Section 96A a) Advance Ruling b)Applicant c)Application d)Authority e)Non-Resident	**Section 23A** a)Activity b)Advance Ruling c)Applicant d)Application e)Authority f)Non-Resident	**Section 28E** a)Activity b) Advance Ruling c)Applicant d)Application e)Authority f)Chairperson g)Member h)Non-Resident
	a) Activity means **production or manufacture of goods** and includes any new business of production or manufacture proposed to be undertaken by the existing producer or manufacture, as the case may be.	**a) Activity** means **import or export** and includes any new business of import or export proposed to be undertaken by the existing importer or exporter, as the case may be.

a) Advance Ruling:- means the determination, by the Authority of a question of law or fact specified in the application regarding the liability to pay service tax in relation to a **service** proposed to be provided, by the applicant	**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** proposed to be undertaken, by the applicant;	**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
b) Applicant **(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 sec **96C(1).** (For the said purpose of clause (iii)notified - public sector company, resident public limited companies(Sec2(71) of companies act) and resident private limited companies(sec 2(68) of companies act 2013), **resident firm(01.03.2015) (includes LLP(LLP ACT 2008), LLP which has no company as its partner, sole proprietorship, One Person Company).**	**c)Applicant** **(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, 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 Sec **23C(1).** (For the said purpose of clause (iii)notified - public sector company, resident public limited companies(Sec2(71) of companies act) and resident private limited companies(sec 2(68) of companies act 2013), **resident firm (01.03.2015) (includes LLP(LLP ACT 2008), LLP which has no company as its partner, sole proprietorship, One Person Company).**	**c) Applicant** **(i) (a)** a non-resident setting up a joint venture in India in collaboration with a non-resident or 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 Sec 28H(1). (For the said purpose of clause (iii)notified - resident who proposes to import goods claiming for assessment under heading 9801 (items eligible for project import) of the First Schedule to the CTA, 1975, public sector company, resident public limited companies(Sec2(71) of companies act) and resident private limited companies(sec 2(68) of companies act 2013), **resident firm (01.03.2015) (includes LLP(LLP ACT 2008), LLP which has no company as its partner, sole proprietorship, One Person Company).**

c) Application means an application made to the Authority under sub-section (1) of section 96C	**d) Application** means an application made to the Authority under sub-Section (1) of Section 23C	**d) Application** means an application made to the Authority under sub-section (1) of section 28H
d)Authority means the Authority for Advance Rulings, constituted under sub-section (1), or authorised by the Central Government under sub-section (2A), of section 28F of the Customs Act, 1962.	**e)Authority** means the Authority for Advance Rulings, constituted under sub-Section (1), or authorised by the Central Government under sub-Section (2A), of Section 28F of the Customs Act, 1962.	**e)Authority** means the Authority for Advance Rulings (Central Excise, Customs & Service Tax) constituted under section 28F.
		f)Chairperson means the Chairperson of the Authority
		g)Member means a Member of the Authority and includes the Chairperson.
e)Non-Resident “non-resident”, “Indian company” and “foreign company” have the meanings respectively assigned to them in clauses (30), (26) and (23A) of section 2 of the Income-tax Act, 1961.	**f)Non-Resident** "Non-resident", "Indian company" and "foreign company" shall have the meanings respectively assigned to them in clauses (30), (26) and (23A) of Section 2 of the Income-tax Act, 1961.	**h)Non-Resident** "non-resident”, “Indian company" and "foreign company" have the meanings respectively assigned to them in clauses (30), (26) and (23A) of section 2 of the Income-tax Act, 1961
		28F-Authority for advance rulings **(1)**The Central Government shall, by notification in the Official Gazette, constitute an Authority for giving advance rulings, to be called as "the Authority for Advance Rulings (Central Excise, Customs & Service Tax)". **(2)** 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. **(2A)** Notwithstanding anything contained in sub-sections (1) and (2), or any other law for the time being in

		force, the Central Government may, by notification in the Official Gazette, authorize an Authority constituted under section 245-O of the Income-tax Act, 1961, to act as an Authority under this Chapter. **(2B)** 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 this Chapter. **(2C)** 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". **(2D)** On and from the date of the authorisation 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 authorisation. **(3)** 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. **(4)** 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. **(5)** The office of the Authority shall be located in Delhi.

96B-Vacancies etc., not to invalidate proceedings. No proceeding before, or pronouncement of advance ruling by, the Authority under this Chapter shall be questioned or shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Authority.	**23B-Vacancies etc., not to invalidate proceedings.** No proceeding before, or pronouncement of advance ruling by, the Authority under this Chapter shall be questioned or shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Authority.	**28G-Vacancies, etc., not to invalidate proceedings** No proceeding before, or pronouncement of advance ruling by, the Authority under this Chapter shall be questioned or shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Authority.

96C- Application for advance ruling. **(1)** An applicant desirous of obtaining an advance ruling under this Chapter may make an application in **FORM -AAR (ST-1)** 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,- (a) classification of any service as a taxable service under Chapter V; (b) the valuation of taxable services for charging service tax; (c) the principles to be adopted for the purposes of determination of value of the taxable service under the provisions of Chapter V; (d) applicability of notifications issued under Chapter V; 1(e) admissibility of credit of duty or tax in terms of the rules made in this regard; 2[(f) determination of the liability to pay service tax on a taxable service under the provisions of Chapter V.] **(3)** The application shall be made in quadruplicate and be accompanied by a fee of **Rs.2500.** **(4)** An applicant may withdraw an application within 30 days from the date of the application	**23C- Application for advance ruling.** **(1)** An applicant desirous of obtaining an advance ruling under this Chapter may make an application in **FORM-AAR (CE-1)** 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, - (a) classification of any goods under the Central Excise Tariff Act, 1985; (b) applicability of a notification issued under sub-Section (1) of Section 5A 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) notifications issued, in respect of duties of excise under this 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 this 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 this Act. **(3)** The application shall be made in quadruplicate and be accompanied by a fee of **Rs.2500.** **(4)** An applicant may withdraw an application within 30 days from the date of the application.	**28H-Application for advance ruling.** **(1)** An applicant desirous of obtaining an advance ruling under this Chapter may make an application in **FORM- AAR (CUS-I)** 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, - (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) applicability of notifications issued in respect of duties under this Act, 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 this Act. (e) determination of origin of the goods in terms of the rules notified under the Customs Tariff Act, 1975 and matters relating thereto. **(3)** The application shall be made in quadruplicate and be accompanied by a fee of **Rs.2500**. **(4)** An applicant may withdraw his application within 30 days from the date of the application.

96D- Procedure on receipt of application **(1)** On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the Commissioner of Central Excise and, if necessary, call upon him to furnish the relevant records: **Provided** that 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 Central Excise. **(2)** The Authority may, after examining the application and the records called for, by order, either allow or reject the application: Provided that 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 Central Excise Officer, the Appellate Tribunal or any Court; **(b)** the same as in a matter already decided by the Appellate Tribunal or any Court : **Provided** further that no application shall be rejected under this sub-section unless an opportunity has been given to the applicant of being heard: **Provided** also that where the application is rejected, reasons for such rejection shall be given in the order. **(3)** A copy of every order made under sub-section (2) shall be sent to the applicant and to the Commissioner of Central Excise. **(4)** 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	**23D- Procedure on receipt of application** **(1)** On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the Commissioner of Central Excise and, if necessary, call upon him to furnish the relevant records ***Provided*** that 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 Central Excise. **(2)** The Authority may, after examining the application and the records called for, by order, either allow or reject the application : ***Provided*** that 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 Central Excise Officer, the Appellate Tribunal or any Court; **(b)** the same as in a matter already decided by the Appellate Tribunal or any Court : ***Provided*** further that no application shall be rejected under this sub-Section unless an opportunity has been given to the applicant of being heard: ***Provided*** also that where the application is rejected, reasons for such rejection shall be given in the order. **(3)** A copy of every order made under sub-Section (2) shall be sent to the applicant and to the Commissioner of Central Excise. **(4)** 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	**28I-Procedure on receipt of application** **(1)** 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 : **Provided** that 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. **(2)** The Authority may, after examining the application and the records called for, by order, either allow or reject the application : **Provided** that 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 : **Provided** further that no application shall be rejected under this sub-section unless an opportunity has been given to the applicant of being heard: **Provided** also that where the application is rejected, reasons for such rejection shall be given in the order. **(3)** A copy of every order made under sub-section (2) shall be sent to the applicant and to the Commissioner of Customs. **(4)** 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. **(5)** 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. **<u>Explanation</u>. -** For the purposes of this sub-section, **"authorised representative"** has the meaning assigned to it in sub-section (2) of section 35Q of the Central Excise Act, 1944. **(6)** The Authority shall pronounce its advance ruling in writing within **90 days** of the receipt of application. **(7)** 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 Central Excise, as soon as may be, after such pronouncement.	applicant or obtained by the Authority, pronounce its advance ruling on the question specified in the application. **(5)** 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. **<u>Explanation</u>**. - For the purposes of this sub-Section, "authorised representative" shall have the meaning assigned to it in sub-Section (2) of Section 35Q. **(6)** The Authority shall pronounce its advance ruling in writing within **90 days** of the receipt of application. **(7)** 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 Central Excise, as soon as may be, after such pronouncement.	applicant or obtained by the Authority, pronounce its advance ruling on the question specified in the application. **(5)** 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. **<u>Explanation.</u>** - For the purposes of this sub-section, "authorised representative" shall have the meaning assigned to it in sub-section (2) of section 146A. **(6)** The Authority shall pronounce its advance ruling in writing **within 90** days of the receipt of application. **(7)** 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.
96E- **Applicability of advance ruling.** **(1)** The advance ruling pronounced by the Authority under section 96D 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 96C; **(c)** on the Commissioner of Central Excise, and the Central Excise authorities subordinate to him, in respect of the applicant.	**23E**- **Applicability of advance ruling.** **(1)** The advance ruling pronounced by the Authority under Section 23D 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 23C; **(c)** on the Commissioner of Central Excise, and the Central Excise authorities subordinate to him, in respect of the applicant.	**28J**-**Applicability of advance ruling**. **(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 referred to in sub-section (1) 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.	**(2)** The advance ruling referred to in sub-Section (1) 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.	**(2)** The advance ruling referred to in sub-section (1) 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.
96F- Advance ruling to be void in certain circumstances **(1)** Where the Authority finds, on a representation made to it by the Commissioner of Central Excise or otherwise, that an advance ruling pronounced by it under sub-section (4) of section 96D 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 Chapter 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. **(2)** A copy of the order made under sub-section (1) shall be sent to the applicant and the Commissioner of Central Excise	**23F- Advance ruling to be void in certain circumstances** (1) Where the Authority finds, on a representation made to it by the Commissioner of Central Excise 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. (2) A copy of the order made under sub-Section (1) shall be sent to the applicant and the Commissioner of Central Excise.	**28K-Advance ruling to be void in certain circumstances** (1) 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. (2) A copy of the order made under sub-section (1) shall be sent to the applicant and the Commissioner of Customs.
96G. Powers of Authority (1) 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; (2) The Authority shall be deemed to be a civil court for the purposes of section 195, but not 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	**23G. Powers of Authority** (1) 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. (2) The Authority shall be deemed to be a civil court for the purposes of Section 195, but not 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.	**28L.Powers of Authority** (1) 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 (2) The Authority shall be deemed to be a civil court for the purposes of section 195, but not 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.