

Advance Ruling

Question 1

State briefly as to who can make an application for “Advance Ruling” under section 23A of the Central Excise Act, 1944?

Answer

According to provisions of Section 23A(c) of Central Excise Act, 1944 an application for advance ruling can be made by any of the following, if he or it proposes to undertake any business activity in India:

- (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 proposed to undertake any business activity in India;

- (ii) a joint venture in India; or
- (iii) a resident falling under any such class or category of persons, as may be specified by Central Government by virtue of issuing a notification in the Official Gazette. It is worth mentioning here that the Central Government has notified Public Sector Company [as defined in Section 2(36A) of Income Tax Act, 1961] as notified person for the purpose of this clause so far.

Question 2

Authority of Advance Ruling under the Income Tax Act, 1961 will be authority for purposes of Central excise also. Explain the validity of the statement with reference to the Central Excise Laws.

Answer

Yes, the statement is valid as per the definition of “authority” provided under section 23A(e) which inter alia provides that Central Government may, by notification in the Official Gazette, authorise an Authority constituted under section 245-O of the Income-tax Act to act as an Authority for Advance Ruling under excise also.

Accordingly, as per **Notification No. 143/2009-Cus. (N.T.) dated 15-9-2009**, Authority of Advance Ruling under the Income Tax Act, 1961 will act as Authority of Advance Ruling under Central Excise Act also.

15.2 Indirect Tax Laws

Question 3

Explain whether an application from an NRI for advance ruling under section 23C, regarding determination of whether a certain process would amount to manufacture, is maintainable?

Answer

As per **section 23C** of the Central Excise Act, 1944, advance ruling can be sought **only** in respect of the following matters:

- (i) classification of any goods under the Central Excise Tariff Act, 1985.
- (ii) notifications issued in respect of excise duty under the Central Excise Act, the Central Excise Tariff Act and duty chargeable under any other law for the time being in force.
- (iii) applicability of exemption notification issued under section 5A having effect on rate of duty.
- (iv) principles to be adopted for determination of value of goods.
- (v) 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.
- (vi) 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.

Thus, a person cannot obtain an advance ruling to decide whether a process would amount to manufacture or not **as such a matter is not covered by section 23C**.

Question 4

Briefly explain the procedure to be followed by the Authority for Advance Rulings on receipt of application for advance ruling.

Answer

As per Section 23D of Central Excise Act, 1944 following procedure is to be followed by the Authority for Advance Rulings on receipt of application for advance ruling:

- (i) On receipt of application for Advance Ruling, the application will be thoroughly scrutinized. If any deficiency or defect is noticed, the same will be communicated to the applicant as far as possible within ten working days. The application will be considered as received only if the application is re-submitted after removal of deficiencies.
- (ii) A serial number is allotted to the application.
- (iii) A copy of the application is forwarded to the Commissioner of Central Excise and if necessary call upon him to furnish the relevant records. The records will be return to the Commissioner after the ruling is given.

- (iv) The Authority has the sole discretion to accept or reject the application. However, an opportunity of being heard has to be given to the applicant before rejecting the application. According to provisions of section 23D(2) an application for Advance Ruling is liable to be rejected in the following cases:-
 - (a) Where the question raised in the application is **already pending** before any Central Excise Officer, the Appellate Tribunal or any Court; or
 - (b) Where the question raised is the same as in a matter **already decided** by any Appellate Tribunal or any Court.
- (v) If application is admitted, Authority will examine the material submitted by the applicant or obtained by the authority. Personal hearing will also be given if requested by the applicant.
- (vi) Authority will pronounce its advance ruling within 90 days of receipt of application.
- (vii) Duly signed Copies of the order are given to the applicant as well as the Commissioner of Central Excise.

Question 5

Briefly explain the binding nature of Advance Ruling.

Answer

According to provisions of Section 23E of Central Excise Act, 1944 the Advance Ruling is binding on the applicant. It is also binding on the Commissioner only in respect of the concerned applicant. In other words, it is binding on the other assesseees. Further, the advance ruling will continue to be binding unless there is change in law or facts on the basis of which such Advance Ruling was pronounced.

Question 6

Explain the circumstances when an Advance Ruling will be void under Central Excise Act, 1944 ?

Answer

According to provisions of section 23F(1) of Central Excise Act, 1944 where on a representation from commissioner or otherwise, it is proved that an advance ruling was obtained by the concerned applicant by **fraud or misrepresentation of facts**, the authority for advance ruling can declare the advance ruling as void ab initio [from the beginning]. Consequently, all the provisions of the Central Excise Act shall apply to the applicant as if such ruling had never been made. Copy of such order is sent to the Commissioner of Central Excise.

Selected Self-Examination Questions

Question 1

Briefly explain the applicability of the Ruling by Advance Ruling Authority with the help of a decided case law.

Question 2

Enumerate the matters on which the advance ruling can be sought under Central Excise Act, 1944.

Question 3

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.