

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:

- (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/which proposes 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. The Central Government has notified public sector companies and resident public limited companies as the class or category of resident persons who can apply for advance ruling.

Question 2

Authority of Advance Ruling under the Income-tax Act, 1961 is the authority for purposes of central excise also. Explain the validity of the statement with reference to the Central Excise Law.

Answer

Yes, the statement is valid.

As per section 23A(e) of the Central Excise Act, 1944, authority, *inter alia*, means Authority for Advance Rulings authorised by the Central Government under section 28F(2A) of the Customs Act, 1962.

Section 28F(2A) of the Customs Act, 1962 stipulates that Central Government may, by notification in the Official Gazette, authorise an Authority constituted under section 245-O of the Income-tax Act, 1961 to act as an Authority for Advance Ruling under customs. Accordingly, *Notification No. 143/2009-Cus. (N.T.) dated 15-9-2009* authorizes the Authority of Advance Ruling under the Income Tax Act, 1961 to act as an Authority for Advance Ruling

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under customs.

From the combined reading of section 23A(e) of the Central Excise Act, 1944 and section 28F(2A) of the Customs Act, 1962, it may be inferred that Authority of Advance Ruling under the Income-tax Act, 1961 is the authority for purposes of central excise also.

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 service tax paid or deemed to have been paid on input service or 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. Moreover, CBEC vide *Circular No. 779/12/2004 – CX dated 11.3.2004* has also clarified 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 binding nature of advance ruling.

Answer

According to provisions of section 23E of the Central Excise Act, 1944, the advance ruling is binding on the applicant who had sought it in respect of the matters referred to in section 23(C)(2). It is also binding on the Commissioner of Central Excise, and the Central Excise authorities subordinate to him, only in respect of the concerned applicant. 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 5

Discuss the circumstances when an advance ruling will be void under the Central Excise Act, 1944.

Answer

Where on a representation from the Commissioner of Central Excise 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. 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 applicant and the Commissioner of Central Excise [Section 23F of the Central Excise Act, 1944].

Question 6

Briefly explain the procedure to be followed by the Authority for Advance Rulings on receipt of application for advance ruling under the Central Excise Act, 1944.

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:-

1. On receipt of application for advance ruling, the Authority has to forward a copy to the relevant Commissioner.
2. The Authority may accept or reject the application. Application can be rejected in the following cases only after giving an opportunity of being heard to the applicant:
 - (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 will pass an order of admission or rejection of the application and give a copy of such order 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 has to pronounce the final order within 90 days of receipt of application.
6. Duly signed copies of the final order are to be given to the applicant as well as the Commissioner of Central Excise.

Exercise

1. *Briefly explain the applicability of the ruling by Advance Ruling Authority with the help of a decided case law.*
2. *Enumerate the matters on which the advance ruling can be sought under the Central Excise Act, 1944.*

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- 3 *Ramesh, a non-resident, intends to manufacture certain excisable goods, but has 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 from the Authority for Advance Rulings. Can he do so? Discuss.*