

Advance Ruling

Question 1

Can an application for advance ruling be withdrawn? If yes, state the time limit for withdrawal of such application?

Answer

Yes, Application for advance ruling can be withdrawn within 30 days from the date of application [Section 28H(4) of the Customs Act, 1962].

Question 2

Explain the term “joint venture in India” under the explanation to section 28E(c) of the Customs Act, 1962 for the purpose of advance ruling.

Answer

As per Explanation to Section 28E(c) of the Customs Act, 1962 the term “**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.

Question 3

Explain briefly if the Authority for Advance Rulings could entertain applications from residents with specific reference to section 28E(c) of the Customs Act, 1962.

Answer

Yes, the Authority for Advance Rulings (AAR) can entertain applications from residents also. Section 28E(c) of the Customs Act, 1962 includes the following within the definition of an applicant:

- (i) a joint venture in India, and
- (ii) a resident setting up a joint venture in India in collaboration with a non-resident; or
- (ii) 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. A Public Sector Company, a resident importing goods under Project Import Scheme and a resident Public Limited Company have been notified so far in pursuance of aforementioned power.

Question 4

Briefly discuss the provisions of the Customs Act, 1962 regarding rejection of an application for advance ruling.

Answer

Under section 28-I(2) of the Customs Act, an application for advance ruling may be rejected on the following grounds:

- (i) if the question raised is **already pending** in the applicant's case before a customs officer, Appellate Tribunal or any Court.
- (ii) if the question raised is the same as in a matter **already decided** by the Appellate Tribunal or any Court.

No application shall be rejected without giving an opportunity to the applicant of being heard. On rejection, reasons for such rejection shall be given in the order.

Question 5

What are the provisions made under the Customs Act, 1962, regarding personal hearing and order under advance ruling?

Answer

The provisions regarding personal hearing and order under advance ruling are contained in section 28-I of the Customs Act, 1962. Section 28-I *inter alia* provides that if an application for advance ruling is received, the authority of advance ruling will examine the material submitted by the applicant or obtained by the authority and issue an order either allowing or rejecting the application. However, no application shall be rejected unless an opportunity has been given to the applicant of being heard.

Where an application is allowed, personal hearing can be given before the pronouncement of the advance ruling, if requested by the applicant. Such hearing can be given to the applicant himself or to his duly authorised representative.

Authority then pronounces its advance ruling within ninety days of the receipt of the application. Copy of the order, signed by members of authority and certified in the prescribed manner is sent to the applicant and the Commissioner.

Question 6

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.

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Answer

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 ₹ 2,500

Exercise

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. *Describe the procedure involved in making an application for advance ruling.*