



Lawgics

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Section 104 of CGST Act, 2017



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104. Advance ruling to be void in certain circumstances.

(1) Where the Authority or the Appellate Authority or the National Appellate Authority finds that advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 or under section 101C has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made:

Provided that no order shall be passed under this sub-section unless an opportunity of being heard has been given to the applicant or the appellant.

Explanation.—The period beginning with the date of such advance ruling and ending with the date of order under this sub-section shall be excluded while computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74.

(2) A copy of the order made under sub-section (1) shall be sent to the applicant, the concerned officer and the jurisdictional officer.

Our Interpretation

Section 104

(Constitution of National Appellate Authority has not been notified yet.)

It states the circumstances under which the **ruling** would be considered as **void-ab-initio** and the resultant impact.

Where the Authority (AAR) or Appellate Authority (AAAR) or the National Appellate Authority **subsequently** discovers that an **advance ruling has been obtained** by the applicant or appellant **fraudulently** or by way of **suppression of material facts** or **misrepresentation of facts**, the Authorities are empowered to declare such a ruling to be **void-ab-initio**. This would result in all the provisions of the Act becoming applicable to the applicant or the appellant as if such advance ruling had never been made.

However, no such order can be passed by the AAR or AAAR or the National Appellate Authority without giving an opportunity of being heard to the applicant or the appellant. Once passed, a copy of such order shall be sent to the applicant and the concerned/ jurisdictional officer.

An explanation has been inserted to provide that the period beginning with the date of advance ruling and ending with the date of order declaring the advance ruling to be void-ab-initio shall be excluded in computing the period for issuance of Show-cause notice and adjudication order under sub-section(2) and (10) of both Sections 73 and 74.

Sections 73(2) and 73(10) specify the time limit within which a show cause notice and adjudication

order respectively, may be issued in a case where the tax is not paid, short paid, erroneously refunded or ITC has been wrongly availed or utilised for any reason, **other than the reason of fraud** or any wilful-misstatement or suppression of facts to evade tax.

Similarly, Section 74(2) and 74(10) specifies the time limit within which a show cause notice and adjudication order respectively, may be issued in a case where the tax is not paid, short paid, erroneously refunded or ITC has been wrongly availed or utilised **by reason of fraud** or any wilful misstatement or suppression of facts.

This explanation seeks to provide the proper officers with additional time period to recover such amount from the applicant/appellant as would have been payable by him if he had not sought the advance ruling fraudulently.

Section 105 of CGST Act, 2017

105. Powers of Authority and Appellate Authority and National Appellate Authority

(1) The Authority or the Appellate Authority or the National Appellate Authority shall, for the purpose of exercising its powers regarding—

- a) discovery and inspection;
- b) enforcing the attendance of any person and examining him on oath;
- c) 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 (5 of 1908).

(2) The Authority or the Appellate Authority or the National Appellate 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, (2 of 1974) and every proceeding before the Authority or the Appellate Authority shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code (45 of 1860).

Our Interpretation

Section 105

(Constitution of National Appellate Authority has not been notified yet.)

The provision specifies the powers conferred on the Authority for Advance Ruling (AAR) or the Appellate Authority (AAAR) or the National Appellate Authority in the discharge of its functions.

The **Authorities** have all the **powers of a civil court** under the Code of Civil Procedure, 1908 for the purpose of:

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

The **Authorities** are **deemed to be a civil court** for the purposes of **Section 195 (Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence)**.

Every proceeding before the Authorities shall be **deemed to be a judicial proceeding** within the meaning of following sections of the Indian Penal Code, 1860.

S.No	Section	Description
1	193	Punishment for false evidence
2	196	Using evidence known to be false
3	228	Intentional insult or interruption to public servant sitting in judicial proceeding