



## Webinar

Topic: Advance Ruling under GST

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**Faculty**

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## Faculty – Profile

**Advocate Ms. Amrita** is an LLM from National Law University, Delhi (NLUD). As a working professional, she is expert in drafting replies to SCN/Department Correspondences, giving opinions, filing appeals & Writs Petition etc. Apart from working with different CA & Law firms, she is also doing Freelance work wherein she is working in different civil laws for various National & International clients which includes notice & contract drafting, client's representation, academic assignments and ghost writing etc.

She says that any person can reach out to her seeking clarification on doubts or legal work related to litigation and advisory. She will try to assist them with her best of knowledge and benevolence granted by God.

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## Maintainability of Advance Ruling Application under Goods and Service Tax (GST) Regime

*“Big Shot Game: Begin by Assessee but last as per Department Verdict”*

### Objective

1. The mechanism of Advance Ruling was introduced in 1998
2. To reduce department's workload and providing clarity to each assessee without undergoing litigation trouble
3. To address any doubt or uncertainty in the taxability of the activity undertaken or likely to be undertaken by them.

## Amendments in Statutory Acts for incorporating Advance Ruling Structure

1. Necessary legislation was introduced by adding –
  - a) Chapter VB in Customs Act, 1962;
  - b) Chapter IIIA in Central Excise Act, 1994 and
  - c) Chapter VA in Finance Act, 1994 [*regulating, Service Tax Law*].
2. Advance ruling provisions subsumed in GST Act, 2017 *vide* Chapter XVII i.e., Section 95 to 106 of the Act.
3. Provisions enumerated in CGST are more or less similar with the sections of Finance Act, 1994.

## Background of Advance Ruling Application in GST

1. Advance Ruling application was only for non-residents up to 2015
2. However, since 2015 it became available to any taxpayer/assessee for clarifying its queries regarding taxability.
3. Proceedings of Advance Ruling applications have to undergo with two steps process -
  - a) First is examining the credibility of application in terms of the CGST provisions
  - b) Discussion on merits of the case
4. Concerned ARA forum shall pronounce its order within ninety days from the receipt of application - section 98(6)

## Background of Advance Ruling Application in GST

### Opportunity of being heard

1. No application can be rejected without granting proper opportunity of being heard
2. In the case of **M/s KBL SPML 25JV v. AAR, Karnataka GST** [Writ Petition No. 1119 OF 2023 (T-RES) 2023 (8) TMI 1354 the Court opined that the opportunity of hearing contemplated is rendered a mere formality as it is matter of violation of the principle of natural justice.
3. In any case if the ARA or AAAR wants to rectify its own ruling referring section 102 of the Act, within six months of the order's date then too, applicant/appellant is entitled for getting, opportunity of being heard before issuing the rectification order.

## Background of Advance Ruling Application in GST Appeal to Appellate Authority

1. In case if the applicant is not satisfied with the rejection or ruling ordered by ARA they can file an appeal against the passed order before Appellate Authority of Advance Ruling (**AAAR**) under sections 99 to 101 of the Act.
2. For appeal, section 100 of the CGST Act, provides **strict time limit** of 30 days (which can be further extended to next 30 days with sufficient reasoning) hence, appeal filed beyond that time frame could not be entertained by the AAAR authority.
3. The said precedent is also upheld by the Delhi HC in the case of **M/s Indian Institute of Corporate Affairs v. Delhi AAAR 2023 (4) TMI 965**

## Severity of Rejection or Acceptation of Advance Ruling Application

1. The topic of maintainability of Advance Ruling application is indispensable in two ways –
  - a) to argue and contradict the department's stand;
  - b) to guide the client correctly
2. The subject matter of Advance Ruling like its provisions, authority and step-by-step procedure has been discussed many times.
3. However, maintainability of the Advance Ruling is not being discussed much.
4. Thus, understanding the relevance of maintainability of Advance Ruling application is very much important



## Maintainability: Basis behind Rejection of Advance Ruling Application

1. Section 98(2) of the Act, gives full authority to department to reject the Advance Ruling application if it is not covered under the scope of application for Advance Ruling, stipulated under section 97(2) of the Act.
2. *“97 (2) The question on which the advance ruling sought under this Act,*
  - a) classification of any goods or services or both;*
  - b) applicability of a notification issued under the provisions of this Act;*
  - c) determination of time and value of supply of goods or services or both;*
  - d) admissibility of input tax credit of tax paid or deemed to have been paid;*
  - e) determination of the liability to pay tax on any goods or services or both;*
  - f) whether applicant is required to be registered;*
  - g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.”*

## Maintainability - Rejection: Live examples where ARA/AAAR has rejected the Advance Ruling application

### Application filed by Recipient

- **M/s A. Nirmala** {TN/05/ARA/2022 dated 28 February 2022} – ARA of Tamil Nadu rejected the application filed by **M/s A. Nirmala** by concluding that only the supplier i.e. provider, not the recipient; is eligible to seek Advance Ruling in terms of section 95 [*Definitions of Advance Ruling*] of the Act.
- The said standard of maintainability of Advance Ruling application is also upheld by AAAR of Gujarat in **M/s Surat Municipal Corporation** {GUJ/GAAR/APPEAL/2022/05}.

## Maintainability - Rejection: Live examples where ARA/AAAR has rejected that Advance Ruling application

### Application filed by Recipient

- Order passed by the Hon'ble AAAR of UP in the case of **M/s UP Metro Rail Corporation Ltd** . {Order No. 10/AAAR/2023} 2023 (9) TMI 855 wherein, appellant has filed application to discern the taxability against the construction, erection & commission services received from M/s KESCO; however, the application was rejected referring section 95(a) of CGST Act and declaring that only supplier of the services can file Application for Advance Ruling.
- It is essential to note that recipient can become applicant in Advance Ruling, if its questions pertain to Reverse Charge Mechanism (**RCM**) or availability of Input Tax Credit (**ITC**). However, in above two quoted applications, applicant has not explained its case in such manner hence, application got rejected.

## Maintainability - Rejection: Live examples where ARA/AAAR has rejected that Advance Ruling application

### Application made by Third Party

- Tamil Nadu ARA has rejected the application made by **M/s Spacelance Solutions Pvt. Ltd.** {TN/06/ARA/2022 dated 28 February 2022} as it was applied on behalf of their customers. So it was non-maintainable as per section 98(2) of the Act read with section 95(a) ibid. Same observation was made that an Advance Ruling application can be filed by the supplier/provider specifically.
- The same authority has already rejected the application filed by **M/s Weg Industries India Pvt. Ltd.** {TN/41/ARA/2021 Dated 30.11.2021} with the similar reasoning.

## Maintainability - Rejection: Live examples where ARA/AAAR has rejected that Advance Ruling application

### Application made by Third Party

- Further, it is paramount to clarify that Advance Ruling application can be filed by representative or agent of the supplier/recipient of the concerned goods or services.
- It happened in the case of **RITES Ltd.** {27/WBAAR/2018-19 Case No. 28 of 2018} where applicant was a project management consultant responsible for passing bills after scrutinizing the same. The applicant was not actually a supplier or recipient.

## Maintainability - Rejection: Live examples where ARA/AAAR has rejected that Advance Ruling application

### Query related to issues pending/settled in any proceedings

- **M/s New Rajamandri Electronics** {KAR ADRG 81/2021 dated 31 December 2021} application was not accepted as the applicant has raised a query based on an audit report issued in pursuance to audit conducted by the Deputy Commercial of Commercial Taxes (Audits). The said application was observed to be non-maintainable in terms of the first proviso of section 98(2) [*Authority shall not admit application where raised question is pending or decided in any proceedings*] of the Act.
- Similar stand was taken by Tamil Nadu AAR in **M/s Tamil Nadu Nurses & Midwives Council** wherein advance ruling application was rejected mentioning about the non-disclosure of enquiry/summon proceeding initiated by DGGI. 2023 (8) TMI 1295

## Maintainability - Rejection: Live examples where ARA/AAAR has rejected that Advance Ruling application

### Question not related to taxability

- It is already discussed that, scope of Advance Ruling is sticks with seven sub-clauses stated in section 97(2) of the Act. Any application disengaging above clauses shall not be entertained by the department.
- This happened in the case of **M/s/ MadusTyre Care** {*KAR ADRG 80/2021 dated 31 December 2021*} wherein applicant submits doubt related to validity of a tax invoice in terms of its related provision i.e. section 31 of the Act read with Rule 46 of GST Rules, 2017. The said application got rejected as raised question is not covered under sub-section (2) of section 97 of the Act.

## Maintainability - Rejection: Live examples where ARA/AAAR has rejected that Advance Ruling application

### Supply already rendered

- ARA of Maharashtra has rejected the application put forth by **M/s Navratna Shipping Pvt. Ltd.** {*GST-ARA-24/2020-21/B-39 dated 31 March 2022*} wherein applicant's client denied to pay GST @18% after the services has been rendered.
- The aforesaid application got rejected referring section 95(a) [*Definition of Advance Ruling*] of the Act with the observation that questioned service was already undertaken by the applicant.
- On the contrary, in **M/s South Indian Federation of Fishermen Societies** {*TN/07/ARA/2022 dated 28.02.2022*} applicant got favorable order against the leviability question raised on supplied materials & labour charges incurred during warranty without any charges.



## Maintainability - Rejection: Live examples where ARA/AAAR has rejected that Advance Ruling application

### Application submitted with inappropriate forum

- Telangana ARA in **M/s Growthmode Consulting Limited** {A.R.Com/07/2020 TSAAR Order No.15/2022} and **M/s Rajasekhar Reddy Tummuru** {A.R.Com/32/2021 TSAAR Order No. 19/2022} rejected the application by considering its forum not appropriate.
- In both cases stated above, the place of supply belongs to other state i.e. Maharashtra under section 12(3) of Integrated Goods and Service Tax (**IGST**) Act, 2017. Accordingly, Advance Ruling applications were rejected with the observation that Telangana ARA is not the appropriate forum.

## CLOSING STATEMENT

- Nobody can deny the eminence benefits of the Advance Ruling platform; as it has given structured window where the assesseees can file application and get clarification on taxability of the activities undertaken by them.
- However, the factual framing of application in Advance Ruling is very crucial aspect. As in present discussion, we have seen several incidences where the ARA/AAAR has rejected the applications out rightly.
- Every counsel/consultant should draft the facts vigilantly that it gets covered under the strict scope of Advance Ruling regime.
- Further, submitting relevant documents aligned with the facts put forth in the Advance Ruling application is also very much required.
- Lastly, the writer would like to end this discussion with a humble request for doing proper home work before filing any application before the ARA.

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# NEVER ENDING PRAISE

Trust in the Lord with all your heart, and do not  
lean on your own understanding.

In all your ways acknowledge him, and he will  
make straight your paths

Thank You