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**OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE
CHENNAI – II COMMISSIONERATE**
M.H.U. COMPLEX, 692, ANNA SALAI, NANDANAM, CHENNAI 600 035

Trade Notice No. 39/2003

Dated : 02 -07-2003

Sub: C.Ex – Scheme of Advance Rulings for Non-Residents
Under the Customs Act, 1962 and the Central Excise
Act, 1944 – Reg.

The Scheme of Advance Rulings for Non-Residents under the Customs Act, 1962 and the Central Excise Act, 1944, has been introduced vide Chapter VB of Customs Act, 1962 and Chapter IIIA in the Central Excise Act, 1944, by the Government of India with a view to facilitate a Non-resident investor to ascertain his tax liabilities in respect of Customs and Central Excise Duties. The salient features of the scheme, procedure to be followed and the form of application for seeking Advance Ruling are circulated for information and guidance. Further, the details of the Officers who can be contacted are given below for the sake of getting clarification on Advance ruling matters.

Sl.No	Name of the Officer & designation	Office Address	Telephone No.	Fax No.
1	Shri Atul Gupta, Additional Commissioner	Ministry of Finance, Deptt. Of Revenue Authority for Advance rulings, Customs and Central Excise, Hotel Samrat, 4 th Floor, Kautilya Marg, Chanakyapuri, NEW DELHI – 110 021.	91-11- 26876729	91-11- 26876729

2	Shri Vijay Kumar, Joint Commissioner	Ministry of Finance, Deptt. Of Revenue Authority for Advance rulings, Customs and Central Excise, Hotel Samrat, 4 th Floor, Kautilya Marg, Chanakyapuri, NEW DELHI – 110 021.	91-11-26876412	91-11-26876410
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The Trade and industry may also use the official Website of Authority for Advance Rulings Customs and Central Excise) at www.cbec.gov.in/cae/aar.htm for any latest information. The authorities can be contacted through E-mail - aarce@hub.nic.in for any clarification.

The contents of the Trade Notice may be brought to the notice of all constituent members of your Associations and the manufacturers in particular.

(Authority : Letter F.No.16/6/2002-AAR dated 5th June, 2003 issued by Smt. Vijai Lakshmi Sharma, Commissioner, Authority for Advance Rulings Customs and Central Excise)

(Issued from file C.N0.IV/16/ 217/2003 CX.Pol. PF-I)

**(K.R.UDAY BHASKAR)
ADDL. COMMISSIONER (TECH)**

To
As per mailing list(Trade and Deptt)

**SCHEME OF ADVANCE RULINGS FOR NON-RESIDENTS
UNDER THE CUSTOMS ACT, 1962 AND
THE CENTRAL EXCISE ACT, 1944.**

Ministry of Finance
Department of Revenue
Authority for Advance Rulings
New Delhi

THE SCHEME OF ADVANCE RULINGS

With a view to facilitating the non-resident investor in ascertaining his tax liabilities in terms of Customs & Central Excise duties a scheme of Advance Rulings has been incorporated in the Customs Act, 1962 and the Central Excise Act, 1944 by the Finance Act,1999. Chapter V-B in the Customs Act, 1962 and Chapter IIIA in the Central Excise Act, 1944 are the relevant chapters under these two Acts.

The Scheme allows a non-resident investor, entering into a joint venture in India in collaboration with a non-resident or resident; or a resident setting up a joint venture in India in collaboration with a non-resident to obtain in advance, a binding ruling from the Authority for Advance Rulings.

An advance ruling under the scheme is with respect to questions pertaining to classification of goods, principles of valuation and the applicability of exemption notifications which could arise in determining the duty liability in respect of an activity proposed to be undertaken by the joint venture parties. Such knowledge of tax consequences would also assist them in determining the viability of the proposed activity. The rulings being final in nature, subject of course to section 28J(2) of the Customs Act, 1962 and section 23 E(2) of the Central Excise Act,1944, would also leave the parties free of any time-consuming and expensive litigation, subsequently.

The Authority for Advance Rulings (Procedure), 2002 details the procedure for obtaining advance rulings.

ACTIVITY ON WHICH ADVANCE RULINGS CAN BE SOUGHT

Activity means import or export under the Customs Act, 1962 and production or manufacture under the Central Excise Act, 1944.

BENEFITS OF OBTAINING ADVANCE RULINGS

Obtaining an advance ruling helps the applicant in planning their Customs & Central Excise activities well in advance. It would also bring certainty in determining the duty liability, as the ruling is binding. Further more, it helps in avoiding long drawn and expensive litigation at a later date. Seeking an advance ruling is inexpensive, and the procedure is simple & expeditious.

AUTHORITY PRONOUNCING ADVANCE RULINGS

An advance ruling is pronounced by an Authority known as the Authority for Advance Rulings, constituted under section 28F of the Customs Act, 1962. It consists of a Chairman, who is a retired Judge of the Supreme

Court of India and two members, one from the Indian Customs & Central Excise Service who is qualified to be a Member of the Central Board of Excise & Customs and the other from the Indian Legal Service who is or is qualified to be an Additional Secretary to the Government of India.

WHO CAN APPLY/ SEEK AN ADVANCE RULING?

Any person who is a non-resident and is setting up a joint venture in India in collaboration with a non-resident or resident, or a resident who is setting up a joint venture in India in collaboration with a non-resident.

WHO IS A NON-RESIDENT?

Under the existing provisions of the Income Tax Act, 1961 the taxable entities are broadly divided into three groups, viz., Individual, Company, and all other persons such as Hindu Undivided Family, Firm, Association of Persons, etc.

These taxable entities are divided into three categories depending upon their resident status. These categories are:

- Resident,
- Resident but not ordinarily resident and
- Non-resident

The resident status of each group of the taxable entities is, in brief, as under:

Individual : An individual is a 'resident' in India in any previous year;

1. If he has been in India during the previous year for 182 days or more, or
 2. If the individual has been in India during the previous year for less than 182 days but has been in India for an aggregate of 365 days or more in the four years preceding the previous year and his stay in India during the previous year is 60 days or more.
- The criterion mentioned at (2) above does not apply if the individual is –

(i) A citizen of India who has left India during the previous year for the purpose of employment outside India; or

(i) A citizen of India or a person of Indian origin, who being outside India, has i) come to India on a visit during the previous year.

- A person of Indian origin is one if he, or either of his parents or any of his grand- parents, was born in undivided India.

Individuals, who are not 'resident' in accordance with the above, are treated as 'non-resident' under the Income-tax Act.

Company: A company is a non-resident if it is neither an Indian company nor one the control and management of whose affairs during the previous year is situated wholly in India.

Every other person : Every other person is a non-resident if, during a previous year the control and management of its affairs is situated wholly outside India.

QUESTIONS ON WHICH ADVANCE RULINGS CAN BE SOUGHT

An advance ruling can be sought on any question in respect of –

- Classification of any goods under the Customs Tariff Act, 1975 or the Central Excise Tariff Act, 1985
- Applicability of notifications issued under sub-section (1) of section 25 of the Customs Act, 1962, or sub-section (1) of section 5A of the Central Excise Act, having a bearing on the rate of duty
- Principles to be adopted for the purposes of determination of value of the goods under the provisions of the Customs Act, 1962 or the Central Excise Act, 1944.

However, an advance ruling cannot be sought where the question –

- is already pending, in applicant's case, before any officer of the Customs or Central Excise, the Appellate Tribunal or any Court; or
- is the same as in a matter already decided by the Appellate Tribunal or any Court.

PROCEDURE FOR SEEKING ADVANCE RULINGS

The applicant may seek an advance ruling by filing an application to the Authority in the prescribed form and manner. The following steps need to be followed by an applicant -

Filing of an application

- An application, in quadruplicate, should be filed in the prescribed form either by the applicant in person or by an authorized representative or may be sent by registered post to the Authority.
- An application and the accompanying annexures may be neatly typed on one side of plain paper of A-4 size (210x297mm) leaving a minimum margin of 30 mm on all the four sides and may be duly page numbered and indexed.
- Only photocopies of the documents on A-4 size may be enclosed with the application except when a document cannot be legibly reduced to A-4 size on photocopier and, in the latter case, it should be folded to A-4 size.
- The question of law or fact on which advance ruling is sought may be stated clearly in the application.

Signing of an application

An application including the documents annexed thereto should be signed in the manner indicated in note 10 to the prescribed form. Where a person signing the application and other documents claims to have been duly authorized to do so, the application should include a **power of attorney**, authorising him to sign and an **affidavit** setting out the unavoidable reasons, which entitle him to sign it.

Authorised Representative

An applicant is entitled to represent his case before the Authority either personally or through an authorized representative. If the applicant desires to be represented by an authorised representative, a document authorizing him to appear for the applicant should be enclosed in original, before the commencement of hearing. If the authorised representative is a relative of the applicant, the document shall state the nature of his relationship with the applicant, or if he is a person regularly employed by the applicant, the capacity in which he is at the time employed. However, where the authorised representative is a legal practitioner, such document of authorisation shall be a duly executed vakalatnama.

Payment of Fee

An Application should be accompanied by a fee of Rs. 2,500 (Rs. two thousand five hundred Indian rupees) through a bank draft drawn in favor of the 'Authority for Advance Rulings' payable at New Delhi.

Withdrawal of application

An applicant may withdraw his application within 30 days from the date of filing the application.

TIME LIMIT FOR PRONOUNCING AN ADVANCE RULING

An advance ruling is required to be pronounced by the Authority within three months of the receipt of a valid application.

IS AN ADVANCE RULING BINDING?

An advance ruling pronounced by the Authority shall be binding (subject to section 28J(2) of the Customs Act, 1962 and section 23 E(2) of the Central Excise Act, 1944), only -

- On the applicant who has sought it, and
- On the jurisdictional Commissioner of Customs or Commissioner of Central Excise, as the case may be, and the Customs and Central Excise Authorities subordinate to him, in respect of the applicant.

CONFIDENTIALITY

The contents of an application would not be disclosed to unauthorised persons.

ENQUIRY

For any information, Additional/Joint Commissioner, Authority for Advance Rulings, Customs and Central Excise, 4th Floor, Hotel Samrat, Kautilya Marg, Chanakyapuri, New Delhi-110021 INDIA may be contacted on any working day. The telephone numbers are given hereunder:

0091-11-26876412

0091-11-26876729

Disclaimer : This brochure should not be construed as an exhaustive statement of law. In case of doubt, reference should always be made to the relevant statutory provisions of the Customs Act, 1962 and the Central Excise Act, 1944, and the rules made thereunder.

Form – AAR (CUS)

[Application for Advance Ruling (Customs)]
 [See rule 3 of the Customs (Advance Ruling) Rules, 2002]
 BEFORE THE AUTHORITY FOR ADVANCE RULINGS
 (CUSTOMS & CENTRAL EXCISE)
 NEW DELHI

(Form of application for seeking Advance Ruling under Section 28H of the
 Customs Act, 1962)

Application No. of

1	Full name and address along with telephone and Fax number of the applicant.	
2	Names, addresses, telephone and fax numbers, of the resident(s)/non-resident(s), setting up the joint venture.	
3	Status of the resident(s)/non-resident (s), setting up the joint venture.	
4	Import – Export Code No.(s) of the joint venture party(s) mentioned at serial number 2 (if any).	
5	Permanent Account Number (s) of the joint venture party(s) mentioned at serial number 2 (if any).	
6	Basis of claim that the person(s) referred to at serial number 2, as the case may be, are non-resident (s).(wherever applicable).	
7	Question(s) of law and/or fact relating to an activity proposed to be undertaken on which the advance ruling is required.	
8	Statement of any relevant facts having a bearing on the aforesaid question (s).	
9	Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the aforesaid question(s).	
10	Commissioner of Customs having jurisdiction in respect of the question referred at serial number seven above (if any).	
11	List of documents / statements attached.	
12	Particulars of account payee demand draft accompanying the application.	
		(Applicant's signature)

VERIFICATION

I, _____ (name in full and in block letters), son/daughter/wife of _____ do hereby solemnly declare that to the best of my knowledge and belief what is stated above and in the annexure(s), including the documents are correct. I am making this application in my capacity as _____ (designation) and that I am competent to make this application and verify it.

2. I also declare that the question (s) on which the advance ruling is sought is/are not pending in any case before any customs authority, Appellate Tribunal or any Court.

3. Verified this day.....of200at

(Applicant's signature)

FORM – AAR (CE)

[Application for Advance Rulings (Central Excise)]

[See rule 3 of the Central Excise (Advance Ruling) Rules, 2002]

BEFORE THE AUTHORITY FOR ADVANCE RULINGS

(CUSTOMS & CENTRAL EXCISE)

NEW DELHI

(Form of application for seeking advance ruling under Section 23C of the Central Excise Act, 1944)

Application No. of

1.	Full name and address along with telephone and Fax number of the applicant.	
2.	Names, addresses, telephone and fax numbers, of the resident(s)/non-resident(s), setting up the joint venture.	
3.	Status of the resident(s)/non-resident(s), setting up the joint venture.	
4.	Registration (s) of the joint venture party(s) mentioned at serial number 2 under Rule 174 of the Central Excise Rules (if any).	
5.	Permanent Account Number (s) of the joint venture party(s) mentioned at serial number 2 (if any).	
6.	Basis of claim that the person(s) referred to at serial number 2, as the	

	case may be, are non-resident (s)(wherever applicable).	
7.	Question(s) of law and/or fact relating to an activity proposed to be undertaken on which the advance ruling is required.	
8.	Statement of any relevant facts having a bearing on the aforesaid question (s).	
9.	Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the aforesaid question(s).	
10.	Commissioner of Central Excise having jurisdiction in respect of the question referred at serial number seven above (if any).	
11.	List of documents / statements attached.	
12.	Particulars of account payee demand draft accompanying the application.	
		(Applicant's signature)

VERIFICATION

I, _____ (name in full and in block letters), son/daughter/wife of _____ do hereby solemnly declare that to the best of my knowledge and belief what is stated above and in the annexure(s), including the documents are correct. I am making this application in my capacity as _____ (designation) and that I am competent to make this application and verify it.

2. I also declare that the question (s) on which the advance ruling is sought is/are not pending in any case before any central excise authority, Appellate Tribunal or any Court.

3. Verified thisday.....of.....200at

(Applicant's signature)

ANNEXURE I

Statement of the relevant facts having a bearing on the question(s) on which the advance ruling is required

Place

Date

(Applicant's signature)

ANNEXURE II

Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the questions (s) on which advance ruling is required

Place

Date

(Applicant's signature)

Notes :

1. The application must be filled in English or Hindi in quadruplicate.
2. The application must be accompanied by an account payee demand draft of Rupees two thousand five hundred drawn in favour of Authority for Advance Rulings, payable at New Delhi. Particulars of the draft should be entered in the column pertaining to item number 12.
3. Please state whether Individual, Hindu undivided family, Company, Firm or Association of Persons, etc.
4. The number and year of receipt of the application will be filled in the Office of the Authority for Advance Rulings.
5. If the space provided for answering any item in the application is found insufficient, separate sheets may be used for this purpose. Each sheet must be signed at the bottom by the applicant.
6. In reply to item number 3 the applicant must state the status of party(s) in the joint venture, i.e. whether the party(s) is an individual, Hindu undivided family firm, company, firm association of persons or any other person. The status should be given in respect of each party.
7. For item number 6, the reply must be given in the context of the provisions regarding 'residence' in India as per the Income Tax Act, 1961.
8. Regarding item number 7, the question(s) should be based on the activity proposed to be under taken, Hypothetical questions will not be entertained.
9. In respect of item number 8, the Applicant must state in detail the relevant facts and also disclose the nature of his activity and the likely date and purpose of the proposed activity(s). Relevant facts reflected in document submitted along with the application must be included in the statement of facts and not merely incorporated by reference.
10. For item number 9, the applicant must clearly state his interpretation of law or facts in respect of the question(s) on which the advance ruling is being sought.
11. The application, the verification appended thereto, the annexures to the application and the statements and documents

accompanying the Annexures 1 and 2, must be signed on each page.