After studying this chapter, you would be able to:

- comprehend the Authority for Advancing Ruling.
- analyse the procedure involved in making an application for advance ruling.
- examine the procedure to be followed by Advance Ruling Authority on receipt of application for Advance Ruling.
- explain the applicability of advance ruling.
- identify the situation in which advance ruling will be void.
- appreciate the powers of Authority for Advancing Ruling.
Chapter VB was inserted in the Customs Act, 1962 by Finance Act, 1999. The Finance Act, 1999 decided to set up an Advance Ruling Authority to give rulings on classification and valuation issues in advance for the benefit of joint ventures with NRIs. The provisions relating to Advance Rulings are contained in sections 28E to 28M. The provisions are discussed below:

1. **DEFINITIONS [SECTION 28E]**

   (a) **“Activity”** means import or export and includes any new business of import or export proposed to be undertaken by the existing importer or exporter, as the case may be.

   (b) **“Advance ruling”** means the determination, by the Authority, of a question of law or fact specified in the application regarding the liability to pay duty in relation to an activity which is proposed to be undertaken, by the applicant.

   (c) **“Applicant”** means a -

      (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 or which, as the case may be, proposes to undertake any business activity in India;

      (ii) a joint venture in India; or

      (iii) 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,

      and which or who, as the case may be, makes application for advance ruling under sub-section (1) of section 28H.

For the said purpose, Central Government has specified the following:-

(a) a resident who proposes to import goods claiming for assessment under heading 9801 (items eligible for project import) of the First Schedule to the Customs Tariff Act, 1975
(b) a public sector company
(c) a resident public limited company
(d) a resident private limited company
(e) a resident firm

Resident: Resident shall have the same meaning as is assigned to it in section 2(42) of the Income Tax Act, 1961 so far it applies to a company.

Public sector company: A public sector company shall have the same meaning as is assigned to it in section 2(36A) of the Income-tax Act, 1961.

Public limited company: Public limited company shall have the same meaning as is assigned to “public company” in section 3(1)(iv) of the Companies Act, 1956\(^1\) and shall include a private company that becomes a public company by virtue of section 43A of the said Companies Act, 1956.

Private limited company: shall have the same meaning as is assigned to “private company” in section 2(68) of Companies Act, 2013.

Firm: shall have the meaning assigned to it in section 4 of the Indian Partnership Act, 1932 and includes-
(i) the limited liability partnership as defined in section 2(1)(n) of the Limited Liability Partnership Act, 2008; or
(ii) limited liability partnership which has no company as its partner; or
(iii) the sole proprietorship; or
(iv) one person company.

Sole proprietorship: means an individual who engages himself in an activity as defined in section 23A(a) of the Central Excise Act, 1944.

One Person Company: means as defined in section 2(62) of the Companies Act, 2013.

Resident: shall have the meaning assigned to it in section 2(42) of the Income-tax Act, 1961 in so far as it applies to a resident firm.

\(^1\) Section 2(71) of the Companies Act, 2013
Here, “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.

Thus, now in case of joint venture an application for advance ruling can be made only when one of the partners is non-resident.

The collaboration would mean either technical or financial collaboration. Joint venture would mean participation by both persons. Residents in the country having joint venture with other residents are not given the benefit.

(d) “Application” means an application made to the Authority under subsection (1) of section 28H.

(e) “Authority” means the Authority for Advance constituted under section 245-O of the Income-tax Act, 1961.

(f) “Non-resident” “Indian company” and “foreign company” have the meanings respectively assigned to them in clauses (30), (26) and (23A) of section 2 of the Income-tax Act, 1961.

Illustration

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, a resident public limited company, a resident private limited company and a resident firm have been notified so far in pursuance of aforementioned power. Here, firm means a partnership firm and includes a
limited liability partnership, a limited liability partnership which has no company as its partner, a sole proprietorship and a one person company.

2. AUTHORITY FOR ADVANCE RULING (CENTRAL EXCISE, CUSTOMS AND SERVICE TAX) [SECTION 28F]

The Authority for Advance Rulings constituted under section 245-O of the Income-tax Act, 1961 shall be the Authority for giving advance rulings for the purposes of this Act. The said Authority shall exercise the jurisdiction, powers and authority conferred on it by or under this Act.

Further, the Member from the Indian Revenue Service (Customs and Central Excise), who is qualified to be a Member of the Board, shall be the revenue Member of the Authority for the purposes of this Act. [Sub-section (1)]

The provisions of sub-section (1) are subject to the provisions of this Act.

3. APPLICATION FOR ADVANCE RULING [SECTION 28H]

The procedure involved in making an application for advance ruling is as follows:

(1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and in such manner as may be prescribed, stating the question on which the advance ruling is sought.

(2) The question on which the advance ruling is sought shall be in respect of the following:

(a) classification of goods under the Customs Tariff Act, 1975;
(b) applicability of a notification issued under sub-section (1) of section 25, having a bearing on the rate of duty;
(c) the principles to be adopted for the purposes of determination of value of the goods under the provisions of this Act.
(d) the applicability of notifications issued in respect of duties under the Customs Act, 1962, the Customs Tariff Act, 1975 and any duty chargeable
under any other law for the time being in force in the same manner as duty of customs leviable under the Customs Act.

(e) determination of origin of the goods in terms of the rules notified under the Customs Tariff Act, 1975.

(3) The application shall be made in quadruplicate and be accompanied by a fee of ten thousand rupees.

(4) An applicant may withdraw his application within thirty days from the date of the application.

Illustration

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].

4. PROCEDURE ON RECEIPT OF APPLICATION

[SECTION 28-I]

The following procedure is to be followed by the Advance Ruling Authority on receipt of an application for Advance Ruling.

Calling for relevant records: On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the Principal Commissioner/Commissioner of Customs and, if necessary, call upon him to furnish the relevant records. Where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the Principal Commissioner/Commissioner of Customs. [Sub-section (1)]

Allowing or rejecting the application The Authority may, after examining the application and the records called for, by order, either allow or reject the application. However, the Authority shall not allow the application where the question raised in the application is –

(a) already pending in the applicant's case before any officer of customs, the Appellate Tribunal or any Court;
(b) the same as in a matter already decided by the Appellate Tribunal or any Court:

Further, no application shall be rejected under this sub-section unless an opportunity has been given to the applicant of being heard. It is also provided that where the application is rejected, reasons for such rejection shall be given in the order [Sub-section (2)].

**Copy of every order to be sent to Principal Commissioner/Commissioner of Customs:** A copy of every order made under sub-section (2) shall be sent to the applicant and to the Principal Commissioner/Commissioner of Customs. [Sub-section (3)]

**Pronouncement of Advance Ruling:** Where an application is allowed under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority, pronounce its advance ruling on the question specified in the application. [Sub-section (4)]

**Opportunity to an applicant of being heard:** On a request received from the applicant, the Authority shall, before pronouncing its advance ruling, provide an opportunity to the applicant of being heard, either in person or through a duly authorised representative. [Sub-section (5)]

Any person who is entitled or required to appear before an officer of customs or the Appellate Tribunal in connection with any proceedings under this Act, otherwise than when required under section 108 to attend personally for examination on oath or affirmation, may, subject to the other provisions of this section, appear by an authorised representative.

For the purposes of this section, "authorised representative" means a person authorised by the person referred to in sub-section (1) of Section 146 to appear on his behalf, being -

(a) his relative or regular employee; or
(b) a custom house agent licensed under section 146; or
(c) any legal practitioner who is entitled to practise in any civil court in India; or
(d) any person who has acquired such qualifications as the Central Government may specify by rules made in this behalf.
**Time limit for pronouncing advance ruling:** The Authority shall pronounce its advance ruling in writing within *six months* of the receipt of application. [Sub-section (6)]

A copy of the advance ruling pronounced by the Authority, duly signed by the Members and certified in the prescribed manner shall be sent to the applicant and to the Principal Commissioner/Commissioner of Customs, as soon as may be, after such pronouncement. [Sub-section (7)]

**5. APPLICABILITY OF ADVANCE RULING [SECTION 28J]**

(1) The advance ruling pronounced by the Authority under section 28-I shall be binding only -

   (a) on the applicant who had sought it;

   (b) in respect of any matter referred to in sub-section (2) of section 28H;

   (c) on the Principal Commissioner/Commissioner of Customs, and the customs authorities subordinate to him, in respect of the applicant.

(2) The advance ruling shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.

**6 ADVANCE RULING TO BE VOID IN CERTAIN CIRCUMSTANCES [SECTION 28K]**

Where the Authority finds, on a representation made to it by the Principal Commissioner/Commissioner of Customs or otherwise, that an advance ruling pronounced by it under sub-section (6) of section 28-I has been obtained by the applicant by fraud or misrepresentation of facts, it may, by order, declare such ruling to be void *ab initio* and thereupon all the provisions of this Act shall apply (after excluding the period beginning with the date of such advance ruling and ending with the date of order under this sub-section) to the applicant as if such advance ruling had never been made.

A copy of the order made under sub-section (1) shall be sent to the applicant and the Principal Commissioner/Commissioner of Customs.
7. POWERS OF AUTHORITY [SECTION 28L]

The Authority shall, for the purpose of exercising its powers regarding
- discovery and inspection,
- enforcing the attendance of any person and examining him on oath,
- 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.

The 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, and every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code.

8. PROCEDURE OF AUTHORITY [SECTION 28M]

The Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure in all matters arising out of the exercise of its powers under this Act.
9. TEST YOUR KNOWLEDGE

1. 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.

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

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

4. 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 follow the same ruling in his case. Vaikunth has sought your advice as his consultant whether he could follow the ruling given in the case of Vaidehi. Explain with reasons.

5. Define ‘activity’ in respect of advance ruling as per section 28E(a) of the Customs Act, 1962.

6. What is advance ruling? In what matters can the advance ruling be obtained?

7. State briefly as to who can make an application for advance ruling under the Customs Act, 1962?

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

10. ANSWERS/HINTS

1. A joint venture in India can apply for advance ruling. 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. Thus, in case of joint venture an application for advance ruling can be made only when one of the partners is non-resident.
The collaboration would mean either technical or financial collaboration. Joint venture would mean participation by both persons. Residents in the country having joint venture with other residents are not given the benefit.

2. An advance ruling can be obtained only in respect of proposed activity and not in respect of existing activity. 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.

3. 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 six months 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 Principal Commissioner of Customs or Commissioner of Customs.

4. 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 ₹ 10,000.

5. [Refer Definitions].
6. [Refer Definitions and application for advance ruling].
7. [Refer applicant under Definitions].
8. [Refer procedure on receipt of application-Section 28I].