

# CHAPTER V OF FINANCE ACT, 1994

**SECTION 96A. Definitions.**— In this Chapter, unless the context otherwise requires,-

- a. “advance ruling” means the determination, by the Authority of a question of law or fact specified in the application regarding the liability to pay service tax in relation to a service proposed to be provided, by the applicant;
- b. “applicant” means-
  - 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;
  - 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;
- c. “application” means an application made to the Authority under sub-section (1) of section 96C;
- d. “Authority” means the Authority for Advance Rulings (Central Excise, Customs and Service Tax) constituted under section 28F of the Customs Act, 1962 (52 of 1962);
- e. “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 (43 of 1961);
- f. words and expressions used but not defined in this Chapter and defined in the Central Excise Act, 1944 (1 of 1944) or the rules made there under shall apply, so far as may be, in relation to service tax as they apply in relation to duty of excise.

**SECTION 96B. Vacancies, etc., not to invalidate proceedings.**- No proceeding before, or pronouncement of advance ruling by, the Authority under this Chapter shall be questioned or shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Authority.

**SECTION 96C. Application for advance ruling.**-

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,-
  - a. Classification of any service as a taxable service under Chapter V;
  - b. the valuation of taxable services for charging service tax;
  - c. the principles to be adopted for the purposes of determination of value of the taxable service under the provisions of Chapter V;
  - d. applicability of notification issued under Chapter V;
  - e. admissibility of credit of service tax.

3. The application shall be made in quadruplicate and be accompanied by a fee of two thousand five hundred rupees.
4. An applicant may withdraw an application within thirty days from the date of the application.

**SECTION 96D. Procedure on receipt of application.-**

1. On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the Commissioner of Central Excise and, if necessary, call upon him to furnish the relevant records: Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the Commissioner of Central Excise.
2. The Authority may, after examining the application and the records called for, by order, either allow or reject the application: Provided that 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 Central Excise Officer, the Appellate Tribunal or any Court;
  - b. the same as in a matter already decided by the Appellate Tribunal or any Court;

Provided further that no application shall be rejected under this sub - section unless an opportunity has been given to the applicant of being heard: Provided also that where the application is rejected, reasons for such rejection shall be given in the order.

3. A copy of every order made under sub-section (2) shall be sent to the applicant and to the Commissioner of Central Excise.
4. 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.
5. 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 authorized representative.  
Explanation.- For the purpose of this sub-section, "authorized representative" has the meaning assigned to it in sub-section (2) of section 35Q of the Central Excise Act, 1944. (1 of 1944).
6. The Authority shall pronounce its advance ruling in writing within ninety days of the receipt of application.
7. 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 Commissioner of Central Excise, as soon as may be, after such pronouncement.

**SECTION 96E. Applicability of advance ruling.-**

1. The advance ruling pronounced by the Authority under Section 96D 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 96C;

- c. on the Commissioner of Central Excise, and the Central Excise authorities subordinate to him, in respect of the applicant.
2. The advance ruling referred to in sub-section (1) 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.

**SECTION 96F. Advance ruling to be void in certain circumstances.-**

1. Where the Authority finds, on a representation made to it by the Commissioner of Central Excise or otherwise, that an advance ruling pronounced by it under sub-section (4) of section 96D 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 Chapter 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.
2. A copy of the order made under sub-section (1) shall be sent to the applicant and the Commissioner of Central Excise.

**SECTION 96G. Powers of Authority.-**

1. 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 (5 of 1908).
2. 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 (2 of 1974), 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 (45 of 1860).

**SECTION 96H. Procedure of Authority.\_**

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.

**SECTION 96-I. Power of Central Government to make rules.-**

1. The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Chapter.
2. In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
  - a. the form and manner for making application under sub-section (1) of section 96C;
  - b. the manner of certifying a copy of advance ruling pronounced by the Authority under sub-section (7) of section 96D;
  - c. any other matter which, by this Chapter, is to be or may be prescribed.
3. Every rule made under this Chapter shall be laid, as soon as may be, after it is made, before each House of Parliament, while it is in session for a total period

of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under the rule.