

[Chapter VB-Advance Rulings

SECTION 28E. Definitions. - In this Chapter, unless the context otherwise requires, -

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3[(b) "advance ruling" means a written decision on any of the questions referred to in section 28H raised by the applicant in his application in respect of any goods prior to its importation or exportation;]

4 [(ba) "Appellate Authority" means the Authority for Advance Rulings constituted under section 245-O of the Income-tax Act, 1961;]

5 [(c) "applicant" means any person,—

(i) holding a valid Importer-exporter Code Number granted under section 7 of the Foreign Trade (Development and Regulation) Act, 1992; or

(ii) exporting any goods to India; or

(iii) with a justifiable cause to the satisfaction of the Authority,

who makes an application for advance ruling under section 28H;]

(d) "application" means an application made to the Authority under sub-section (1) of section 28H;

6 [(e) "Authority" means the Customs Authority for Advance Rulings appointed under section 28EA;]

(f) "Chairperson" means the Chairperson of the 7[Appellate Authority];

(g) "Member" means a Member of the 8[Appellate Authority]; and includes the Chairperson; and

9 [(h) "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).]

10[SECTION 28 EA. Customs Authority for Advance Rulings. – (1) The Board may, for the purposes of giving advance rulings under this Act, by notification, appoint an officer of the rank of Principal Commissioner of Customs or Commissioner of Customs to function as a Customs Authority for Advance Rulings:

Provided that till the date of appointment of the Customs Authority for Advance Rulings, the existing Authority for Advance Rulings constituted under section 245-O of the Income-tax Act, 1961 shall continue to be the Authority for giving advance rulings for the purposes of this Act.

(2) The offices of the Authority may be established in New Delhi and at such other places, as the Board may deem fit.

(3) Subject to the provisions of this Act, the Authority shall exercise the powers and authority conferred on it by or under this Act.]

11[SECTION 28F. Authority for advance rulings. - [(1) Subject to the provisions of this Act, the

Authority for Advance Rulings constituted under section 245-O of the Income-tax Act, 1961 shall be 12[the Appellate Authority for deciding appeal under this Chapter and the said Appellate Authority] shall exercise the jurisdiction, powers and authority conferred on it by or under this Act:

Provided that 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 13[Appellate Authority] for the purposes of this Act.

(2) On and from the date on which the Finance Bill, 2017 receives the assent of the President, every application and proceeding pending before the erstwhile Authority for Advance Rulings (Central Excise, Customs and Service Tax) shall stand transferred to the Authority from the stage at which such application or proceeding stood as on the date of such assent.]

14[(3) On and from the date of appointment of the Customs Authority for Advance Rulings, every application and proceeding pending before the erstwhile Authority for Advance Rulings shall stand transferred to the Authority from the stage at which such application or proceeding stood as on the date of such appointment.]

15[SECTION 28G. [* * * *]]

SECTION 28H. 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 goods under the Customs Tariff Act, 1975 (51 of 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.

16[(d) applicability of notifications issued in respect of tax or duties under this Act or the Customs Tariff Act, 1975 or any tax or duty chargeable under any other law for the time being in force in the same manner as duty of customs leviable under this Act or the Customs Tariff Act;]

17[(e) determination of origin of the goods in terms of the rules notified under the Customs Tariff Act, 1975 (51 of 1975) and matters relating thereto.]

18[(f) any other matter as the Central Government may, by notification, specify.]

(3) The application shall be made in quadruplicate and be accompanied by a fee of 19[ten thousand rupees].

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

20[(5) The applicant may be represented by any person resident in India who is authorised in this behalf.

Explanation.—For the purposes of this sub-section “resident” shall have the same meaning as assigned to it in clause (42) of section 2 of the Income-tax Act, 1961.]

SECTION 28I. Procedure on receipt of application. - (1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the 21[Principal Commissioner of Customs or Commissioner of Customs] 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 22[Principal Commissioner of Customs or Commissioner of Customs].

(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 23[***] 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 :

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 22[Principal Commissioner of Customs or Commissioner of Customs].

(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 authorised representative.

Explanation. - For the purposes of this sub-section, "authorised representative" shall have the meaning assigned to it in sub-section (2) of section 146A.

(6) The Authority shall pronounce its advance ruling in writing within 24[three months] 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 22[Principal Commissioner of Customs or Commissioner of Customs], as soon as may be, after such pronouncement.

SECTION 28J. Applicability of advance ruling. - (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 22[Principal Commissioner of Customs or Commissioner of Customs], and the customs 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 28K. Advance ruling to be void in certain circumstance (1) Where the Authority finds, on a representation made to it by the 22[Principal Commissioner of Customs or 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 25[***] to the applicant as if such advance ruling had never been made.

26 [Provided that in computing the period of two years referred to in clause (a) of sub-section (1) of section 28, or five years referred to in sub-section (4) thereof, for service of notice for recovery of any duty not levied, short-levied, not paid or short-paid on account of the advance ruling, the period beginning with the date of such advance ruling and ending with the date of the order under this sub-section shall be excluded.]

(2) A copy of the order made under sub-section (1) shall be sent to the applicant and the 22 [Principal Commissioner of Customs or Commissioner of Customs].

27[SECTION 28KA. Appeal.- (1) Any officer authorised by the Board, by notification, or the applicant may file an appeal to the Appellate Authority against any ruling or order passed by the Authority, within sixty days from the date of the communication of such ruling or order, in such form and manner as may be prescribed:

Provided that where the Appellate Authority is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period so specified, it may allow a further period of thirty days for filing such appeal.

(2) The provisions of sections 28-I and 28J shall, mutatis mutandis, apply to the appeal under this section.]

SECTION 28L. Powers of Authority. - (1) The 28[Authority or Appellate 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 28[Authority or 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 28[Authority or Appellate 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).

29 [SECTION 28M. Procedure for Authority and Appellate Authority. - (1) The Authority shall follow such procedure as may be prescribed.

(2) The Appellate 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 and authority under this Act.]

1. Chapter VB (containing sections 28E to 28M) inserted (w.e.f. 11-5-1999) by section 103 of Act 27 of 1999.

2. Omitted by section 64 of the Finance Act, 2018(13 of 2018). Before omission clause (a) of section 28E stood as under:

(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; as substituted by section 68 of Act 17 of 2013, for clause (a) (w.e.f. 10-5-2013). Clause (a), before substitution, stood as under:

'(a) "activity" means import or export:'

3. Substituted by Finance Act, 2018(13 of 2018), section 64 (w.e.f. 29.03.2018). Clause (b), before substitution by Act 13 of 2018, stood as under:

"(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;"

4. Inserted by Finance Act, 2018(13 of 2018), section 64 (w.e.f. 29.03.2018).

5. Substituted by Finance Act, 2018(13 of 2018), section 64 (w.e.f. 29.03.2018). Earlier clause (c) as substituted by section 65(a) of Act 18 of 2005, (w.e.f. 13-5.2005) stood as under:

(c) "applicant" means -

- (i) (a) a non-resident setting up a joint venture in India in collaboration with a non-resident or 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;

Explanation. - For the purposes of this clause, "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.'

Prior to this, clause (c) was substituted by Act 32 of 2003, section 110(a) (w.e.f. 14-5-2003). Clause (c), before substitution by Act 18 of 2005, stood as under:

'(c) "applicant" means-

- (i) a non-resident setting up a joint venture in India in collaboration with a non-resident or a resident; or
- (ii) a resident setting up a joint venture in India in collaboration with a non-resident; or
- (iii) a wholly owned subsidiary Indian company, of which the holding company is a foreign company , who proposes to undertake any business activity in India and makes application for advance ruling under sub-section (1) of section 28H.'

6. Substituted by Finance Act, 2018 (13 of 2018), section 64(w.e.f. 29.03.2018). Earlier clause (e) stood as under:

'(e) "Authority" means the Authority for Advance Rulings constituted under section 245-O of the Income-tax Act, 1961' as substituted by section 93 of the Finance Act, 2017, for clause (e). Earlier clause (e) was amended by Act 18 of 2005, sec. 65(b) (w.e.f. 13-5-2005). Clause (e), before substitution, stood as under:

'(e) "Authority" means the Authority for Advance Ruling (Central Excise, Customs and Service Tax) constituted under section 28F:.'

7. Substituted by Finance Act, 2018 (13 of 2018), section 64(w.e.f. 29.03.2018) for " Authority".

8. Substituted by Finance Act, 2018 (13 of 2018), section 64(w.e.f. 29.03.2018) for " Authority".

9. Substituted by Act 32 of 2003, sec 110(b) for clause (h) w.e.f. (14-5-2003).

10. Inserted by Finance Act, 2018 (13of 2018), section 65(w.e.f. 29.03.2018)

11. (1). Substituted by section 94 of the Finance Act, 2017, for section 28F. Earlier section 28F was amended by Act 18 of 2005, sec. 66 (w.e.f. 13-5-2005) and by Act 33 of 2009, sec. 86 (w.e.f. 15-9-2009), vide G.S.R. 676 (E), dated 14th September, 2009). Section 28F, before substitution, stood as under:

"28F. Authority for advance rulings. (1) The Central Government shall, by notification in the Official Gazette, constitute an Authority for giving advance rulings, to be called as the Authority for Advance Rulings (Central Excise, Customs and Service Tax).

(2). The Authority shall consist of the following Members appointed by the Central Government, namely:-

- (a) a Chairperson, who is a retired judge of the Supreme Court;
- (b) an officer of the Indian Customs and Central Excise Service who is qualified to be a Member of the Board;
- (c) an officer of the Indian Legal Service who is, or is qualified to be, an Additional Secretary to the Government of India.

(2A) Notwithstanding anything contained in sub-section (1) and (2), or any other law for the time being in

force, the Central Government may, by notification in the Official Gazette, authorise an Authority constituted under section 245-O of the Income-tax Act, 1961 (43 of 1961), to act as an Authority under this Chapter.

(2B) On and from the date of publication of notification under sub-section (2A), the Authority constituted under sub-section (1) shall not exercise jurisdiction under this Chapter.

(2C) For the purposes of sub-section (2A), the reference to “an officer of the Indian Revenue Service who is qualified to be a Member of Central Board of Direct Taxes” in clause (b) of sub-section (2) of section 245-O of the Income-tax Act, 1961 (43 of 1961) shall be construed as reference to ‘an officer of the Indian Customs and Central Excise Service who is qualified to be a Member of the Board’.

(2D) On and from the date of the authorisation of Authority under sub-section (2A), every application and proceeding pending before the Authority constituted under sub-section (1) shall stand transferred to the Authority so authorised from the stage at which such proceedings stood before the date of such authorisation.

(3). The salaries and allowances payable to, and the terms and conditions of service of, the Members shall be such as the Central Government may by rules determine.

(4) The Central Government shall provide the Authority with such officers and staff as may be necessary for the efficient exercise of the powers of the Authority under this Act.

(5) The office of the Authority shall be located in Delhi.”

12. Substituted by Finance Act, 2018 (13 of 2018), section 66(w.e.f. 29.03.2018) for “the Authority for giving advance rulings for the purposes of this Act and the said Authority”

13. Substituted by Finance Act, 2018 (13 of 2018), section 66(w.e.f. 29.03.2018) for “Authority”.

14. Inserted by Finance Act, 2018 (13 of 2018), section 66(w.e.f. 29.03.2018)

15. Omitted by section 95 of the Finance Act, 2017. Section 28G, before omission, stood as under: “28G. Vacancies, etc., not to invalidate proceedings – No proceeding before, or pronouncement of advance ruling, the Authority under this Chapter shall be questioned or shall be invalid on the ground merely of the existence or any vacancy or defect in the constitution of the Authority.”

16. Substituted by Finance Act, 2018 (13 of 2018), section 67(w.e.f. 29.03.2018) for clause (d). Earlier to substitution clause (d) stood as under as inserted (w.e.f. 14-5-2003) by section 111 of Act 32 of 2003: ‘(d) applicability of notifications issued in respect of duties under this Act, the Customs Tariff Act, 1975 (51 of 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 this Act.’

17. Inserted (w.e.f. 13-5-2005) by section 67 of Act 18 of 2005.

18. Inserted by Finance Act, 2018 (13 of 2018), section 67(w.e.f. 29.03.2018).

19. Substituted by sec 96 of the Finance Act, 2017, for “two thousand five hundred rupees”.

20. Inserted by Finance Act, 2018 (13 of 2018), section 67(w.e.f. 29.03.2018).

21. Substituted (w.e.f. 6-8-2014) by section 78 of Act 25 of 2014, for “Commissioner of Customs”.

22. Substituted (w.e.f. 6-8-2014) by section 78 of Act 25 of 2014, for “Commissioner of Customs”.

23. The words “except in the case of a resident applicant” omitted (w.e.f. 11-5-2002) by section 122 of Act 20 of 2002.

24. Substituted by Finance Act, 2018 (13 of 2018), section 68(w.e.f. 29.03.2018) for “six months”. Earlier this was substituted by section 97 of the Finance Act, 2017, for “ninety days”.

25. Omitted by Finance Act, 2018 (13 of 2018), section 69(w.e.f. 29.03.2018) the words ‘(after excluding the period beginning with the date of such advance ruling and ending with the date of order under this sub-section)’

26. Inserted by Finance Act, 2018 (13 of 2018), section 69(w.e.f. 29.03.2018).

27. Section 28KA shall be inserted with effect from such dated as the Central Government may, by notification, appoint as amended by Finance Act, 2018 (13 of 2018), section 70(w.e.f. 29.03.2018).

28. Substituted by Finance Act, 2018 (13 of 2018), section 71(w.e.f. 29.03.2018) for “Authority”.

29. Substituted by Finance Act, 2018 (13 of 2018), section 72(w.e.f. 29.03.2018). Earlier section 28 M stood as under:

‘28M. 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.’