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**STANDING COMMITTEE ON FINANCE
(2008-09)
FOURTEENTH LOK SABHA**

**MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

**Authority for Advance Rulings on
Central Taxes Bill, 2007**

SEVENTY-SECOND REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

October, 2008/Asvina 1930 (Saka)

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(2007-08)**

(FOURTEENTH LOK SABHA)

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Authority for Advance Rulings on Central Taxes Bill, 2007

*Presented to Lok Sabha on 21 October, 2008
Laid in Rajya Sabha on 21 October, 2008*



**LOK SABHA SECRETARIAT
NEW DELHI**

October, 2008/Asvina 1930 (Saka)

COMPOSITION OF STANDING COMMITTEE ON FINANCE – 2008-2009

Shri Ananth Kumar - Chairman

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SECRETARIAT

1. Shri A. Louis Martin - Joint Secretary
2. Shri A.K. Singh - Director
3. Shri T.G. Chandrasekhar - Deputy Secretary

* Nominated to this Committee w.e.f. 26.8.2008

INTRODUCTION

1. Chairman of the Standing Committee on Finance having been authorized by the Committee to submit the Report on their behalf, present this Seventy-second Report on the Authority for Advance Rulings on Central Taxes Bill, 2007.

2. The Authority for Advance Rulings on Central Taxes Bill, 2007, introduced in Lok Sabha on 6 December, 2007, was referred to the Committee on 10 December, 2007 for examination and report thereon, by the Hon'ble Speaker, Lok Sabha in consultation with the Chairman, Rajya Sabha under Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee, at their sitting held on 19 June, 2008 heard the views of PHD Chamber of Commerce and Industry (PHDCCI), Institute of Chartered Accountants of India (ICAI) and Federation of Indian Export Organisations (FIEO) in connection with the examination of the Bill.

4. The Committee took oral evidence of the representatives of the Ministry of Finance (Department of Revenue) on 25 January, 2008 and 27 June, 2008.

5. The Committee considered and adopted this report at their sitting held on 24 September, 2008.

6. The Committee wish to express their thanks to PHD Chamber of Commerce and Industry (PHDCCI), Institute of Chartered Accountants of India (ICAI) Federation of Indian Export Organisations (FIEO), [Taxindiaonline.com Pvt. Ltd.](http://Taxindiaonline.com) and Shri S.R. Wadhwa, former Chairman, Income Tax Settlement Commission for furnishing Memoranda in connection with examination of the Bill. They also wish to thank in particular the representatives of PHDCCI, ICAI and FIEO who appeared before the Committee and placed their views.

7. The Committee also wish to express their thanks to the Ministry of Finance (Department of Revenue) for placing before them the material and information they wanted in connection with examination of the Bill. They also wish to thank in particular the representatives of the Ministry of Finance (Department of Revenue) who gave evidence and placed their considered views before the Committee.

8. For facility of reference, the observations/recommendations of the Committee have been printed in thick type in the body of the Report.

NEW DELHI;
7 October, 2008
15 Asvina, 1930 (*Saka*)

ANANTH KUMAR,
Chairman,
Standing Committee on Finance.

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REPORT

The Authority for Advance Rulings on Central Taxes Bill, 2007 was introduced in the Lok Sabha on 7 December, 2007 and was referred to the Standing Committee on Finance on 10 December, 2007 by the Hon'ble Speaker for examination and report thereon.

2. The Committee invited memoranda/suggestions regarding the Authority on Advance Rulings on Central Taxes Bill, 2007 from the Chambers of Commerce and Industry, various interest groups and organizations and experts. The Committee received memoranda/suggestions on the provisions of the Bill from the (i) PHD Chamber of Commerce and Industry (PHDCCI), (ii) Institute of Chartered Accountants of India (ICAI), (iii) Federation of Indian Export Organisations (FIEO), (iv) Taxindiaonline.com and (v) Shri S.R. Wadhwa, Former Chairman, Income Tax Settlement Commission.

3. The Committee heard the views of the representatives of the PHD Chamber of Commerce and Industry, ICAI and Federation of Indian Export Organisations (FIEO) on the Bill. The Chambers of Commerce, other interest groups and experts have, in general, expressed the need for expanding the ambit and scope of the present scheme of advance rulings on Central Taxes to enable resident Indian assesseees also to avail the facility.

4. The Committee also took evidence of the representatives of the Ministry of Finance (Department of Revenue) in connection with examination of the Bill.

I. Authority for Advance Rulings – Present Set-up and the proposed Common Authority

A. Authorities for Advance Rulings:

5. At present, there are two Authorities for Advance Rulings; one constituted under Section 245-O of the Income Tax Act, 1961, which has, under Section 24 of the Central Sales Tax Act, 1956, also been notified as the Central Sales Tax Appellate Authority, and the other constituted under Section 28-F of the Customs

Act, 1962, which is also an Authority for Advance Rulings under the Central Excise Act, 1944 and the Finance Act, 1994 for purposes of Service Tax. These Authorities, called as “Authority for Advance Rulings (Income Tax)” and “Authority for Advance Rulings (Central Excise, Customs and Service Tax)”, have been established to enable applicants to obtain, in advance, binding rulings from the said Authorities on issues which may arise in the determination of their tax liabilities.

6. The Authority for Advance Rulings for direct taxes was constituted under the Finance Act, 1993 and has been functioning since 01.6.1993, and the Authority for Advance Rulings for Indirect taxes was constituted under the Finance Act, 1999 and has been functioning since 26.02.2002.

7. While the Authority for Advance Rulings (Income Tax) has been set up with the objective of reducing needless litigation and promoting better taxpayer relations in respect of transactions involving non-residents; the Authority for Advance rulings (Central Excise, customs, Service Tax) has been established for providing binding rulings on important issues so that the intending foreign investors will have a clear cut indication of their duty liability in advance.

8. Each of the two existing Authorities for Advance (Tax) Rulings comprises of:

- Chairman who is a retired Supreme Court Judge.
- Member (Legal) from Indian Legal Service, who is, or is qualified to be an Additional Secretary to the Government of India.
- Member (Revenue) from the respective Indian Revenue Service, who is qualified to be a Member of CBDT/CBEC.

Scheme of Advance Rulings:

9. The scheme of advance rulings for Direct and Indirect Taxes as developed since inception and presently prevalent is as follows:

Direct Taxes:

10. Initially, applicants to the Authority for Advance Rulings could only be non-residents. Advance Ruling was defined to mean the determination of a question

of law or fact in relation to a transaction, which has been undertaken or is proposed to be undertaken by a non-resident. Subsequently, in 1998, the definition of advance ruling was amended to include decisions in relation to an assessment pending before an income-tax authority or Tribunal in case of a resident who falls within such class or category of persons as the Central Government may notify. The Central Government, vide Notification No.S.O.473(E) dated 21.06.1999 notified the following class of persons as eligible residents under this provision:-

- (a) public sector company as defined in clause (36A) of section 2 of the Income-tax Act; and
- (b) person seeking advance ruling in relation to the tax liability of a non-resident arising out of a transaction undertaken or proposed to be undertaken by him with a non-resident.

11. In the year 2000 and then further in 2003, the Income-tax Act was amended and advance ruling was re-defined to include:-

- (i) a determination by the Authority in relation to a transaction which has been undertaken or is proposed to be undertaken by a non-resident applicant; or
- (ii) a determination by the Authority in relation to the tax liability of a non-resident arising out of a transaction which has been undertaken or is proposed to be undertaken by a resident applicant with such non-resident, and such determination shall include the determination of any question of law or of fact specified in the application;
- (iii) a determination or decision by the Authority in respect of an issue relating to computation of total income which is pending before any income-tax authority or the appellate tribunal and such determination or decision shall include the determination or decision of any question of law or of fact relating to such computation of total income specified in the application.

12. Simultaneously, amendments were made in the definition of applicant and it was redefined to mean any person who –

- (i) is a non-resident referred to in (i) above; or
- (ii) is a resident referred to in (ii) above; or
- (iii) is 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.

13. Public sector companies are residents that are expressly notified by the Government as eligible to approach the Authority for Advance Rulings in respect of issues relating to computation of total income which is pending before any income-tax authority or appellate tribunal or any question of law or fact relating to such computation of total income. However, in the context of the Hon'ble Supreme Court's Judgment in ONGC Vs. Collector of Central Excise {1995 Supp (4) SCC 541 = 1992(61) ELT 3 (SC)}, the Authority for Advance Rulings held that clearance of the Committee on Disputes (COD) would be necessary before an application is made to it by the public sector company.

Indirect Taxes:

14. In regard to the scheme pertaining to indirect taxes, initially, the applicants before Authority for Advance Rulings could be the following :-

A non-resident setting up a joint venture in India in collaboration with a non-resident or a resident or a resident setting up a joint venture in India in collaboration with a non-resident.

15. In 2005, the Customs, Central Excise and Finance Acts were amended to enlarge the scope of the Authority to cover the following categories of persons as applicants:-

- (i) A non-resident setting up a joint venture in India who proposes to undertake any business activity in India;
- (ii) A resident setting up a joint venture in India in collaboration with a non-

- resident who proposes to undertake any business activity in India;
- (iii) A wholly owned subsidiary Indian company, of which the holding company is a foreign company which proposes to undertake any business activity in India;
 - (iv) A joint venture in India in which one or more of the participants is a non-resident having substantial interest;
 - (v) In addition to the above, the scope of the 'applicant' in the Customs Act was also expanded to cover a resident belonging to a category of persons that is notified by the Central Government {eg., Importers importing from Singapore under Comprehensive Economic Co-operative Agreement (CECA) vide Notification No. 69/2005-Cus(NT)}

B. Proposed Common Authority

16. According to the Ministry of Finance, while reviewing the performance of the two Authorities for Advance Rulings, viz., Authority on Advance Rulings (Income Tax) and Authority for Advance Rulings (Central Excise, Customs and Service Tax), it was noticed that these Authorities did not have adequate work, to justify separate Authorities with separate establishments. A decision was, therefore, taken to constitute a common Authority for Advance Rulings for performing the functions of these Authorities, vide the Authority for Advance Rulings on Central Taxes Bill, 2007.

17. Some of the Salient features of the Authority for Advance Rulings on Central Taxes Bill, 2007 are as follows:

- (i) The Authority for Advance Rulings on Central Taxes shall exercise such powers and discharge such functions, as have been conferred on it under the Central Excise Act, 1944, the Income-tax Act, 1961, the Customs Act, 1962, the Finance Act, 1994, the proposed Authority for Advance Rulings on Central Taxes Act or any other Act.
- (ii) The Authority shall, for the purposes of exercising its powers regarding discovery and inspection, summoning and enforcing the

attendance of any person and examining him on oath, issuing commissions for the examination of witnesses or documents, compelling production of books of account, other records and documents, have all the powers of a civil court under the Code of Civil Procedure, 1908.

- (iii) Every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code and for the purpose of section 196 of the Indian Penal Code, and the Authority shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.
- (iv) The Authority shall have power to regulate its own procedure in all matters arising out of the exercise of its powers.

18. The Authority for Advance Rulings on Central Taxes Bill, 2007 is aimed to provide for the constitution of an Authority for Advance Rulings on Central Taxes as a substitute of the Authority for Advance Rulings (Income Tax) constituted under section 245-O of the Income-Tax Act, 1961 and the Authority for Advance Rulings (Central Excise, Customs and Service Tax) constituted under section 28F of the Customs Act, 1962. The Committee having examined the Bill from all angles, propose it, for consideration by the House, subject to following specific recommendations

II. Functioning of the Authorities for Advance Rulings

19. Detailing the background to the proposal to constitute a Common Authority for Advance Rulings by an independent enactment, the Department of Revenue, in a written note informed the Committee, inter alia:

“The Authority for Advance Rulings (Customs and Central Excise) consists of a Chairman (retired Judge of the Supreme Court with a fixed salary of Rs.30,000) with two Members of the rank of Additional Secretary to the Government of India and other Gazetted and non-gazetted staff. The total sanctioned strength of the Authority is 12, which were earlier sanctioned for a period of three years w.e.f. 11.12.2000. Subsequently, with the approval of Competent Authority, the sanction was extended for one year upto 10.12.2004. When the proposal was referred to Hon'ble PM for further continuation of the post of Chairman, the PM directed that a view may be taken by the Ministry on the justification for continuation of the AAR (C&CE) in view of practically no work with it.”

20. According to the Department of Revenue, in pursuance of the directions of the Prime Minister, the matter relating to the justification for continuation of the Authority for Advance Rulings (Customs and Central Excise) was examined by a departmental Committee, which considered the objective of setting up of the Authority, the work done by the Authority since it became functional, the expenditure incurred and the sanctioned strength etc. Having observed that the work load in the AAR (IT) was also not very heavy, the Departmental Committee felt that the benefits of merging the two AARs would be substantial. This, the Committee felt was in view of the fact that the Chairman was holding charge of both the authorities and one Member was a person from the Indian Legal Service, who is or is qualified to be an Additional Secretary to the Government of India and the second Member had to be an officer of the respective Indian Revenue Service, who is qualified to be Member of the respective Board. Considering that a common authority for Advance Rulings can be made functional by adding one Member from the Indian Customs and Central Excise Service to the Authority for Advance Rulings (IT) in addition to other Members of that Authority, the

departmental Committee proposed transferring of the work of the Authority for Advance Rulings for Customs and Central Excise and the Authority for Advance Rulings for Income Tax to a Common Authority.

21. The Department, in this regard, also informed as under:

“While considering the proposal for transfer of the work of Authority for Advance Rulings for Customs and Central Excise and the Authority for Advance Rulings for Income Tax to a common Authority, it emerged that there are two distinct alternatives to achieve the objective of a single Authority on Advance Rulings.

- (i) to constitute a new common AAR by an independent enactment and transfer work of both authorities for Advance Rulings to this.
- (ii) to make modifications in the Customs Act to the effect that the Authority for Advance Rulings created under the Income Tax Act will also work as an Authority on Advance Rulings (C&CE) with the modification that when the Authority decides cases related to Customs and Central Excise, the Technical Member on the Bench would be from the Customs and Central Excise side in place of the Technical member from Income Tax.

On consideration of the above alternatives, in a meeting taken by Hon'ble Finance Minister, it was decided to draft a separate Act for the Authority for Advance Rulings to take care of all matters relating to direct and indirect taxes. Accordingly, a draft legislation was prepared in consultation with the Ministry of Law to provide for constitution of an Authority for Advance Rulings on Central Taxes as a substitute of the Authority for Advance Rulings constituted under section 245-O of the Income-tax Act, 1961 and the Authority for Advance Rulings (Central Excise, Customs and Service Tax) constituted under section 28F of the Customs Act, 1962, and for matters connected therewith or incidental thereto.”

22. The Committee desired to know details of the nature and number of cases for advance rulings dealt with by the two Authorities since inception mainly in consideration of the fact that the decision to constitute a Common Authority for Advance Rulings for transferring the functions of the existing two Authorities was taken as it was noticed that the Authorities did not have adequate work to justify separate Authorities with separate establishments. The Department of Revenue, in this regard, in a written reply, informed, inter alia:

“Since its inception, Authority for Advance Rulings (Income Tax) has dealt with 577 applications. Rulings have been pronounced by the Authority on several complex issues of non-resident taxation, which *inter-alia* included determination regarding ‘resident of the contracting state’; ‘permanent establishment’; ‘capital gains’; ‘royalty’; ‘fees for technical services’ etc. Besides, in their capacity as the Central Sales Tax Appellate Authority (CSTAA), the Authority also dealt with 32 appeals relating to CST till May, 2008.

Authority for Advance Rulings (Central Excise, Customs and Service Tax) from the date of inception till 31.3.2008 has disposed of 101 applications out of 112 applications received. Rulings have been pronounced by the Authority on several issues pertaining to indirect tax laws which *inter-alia* included classification/valuation of goods/services; applicability of notifications issued in respect of customs, central excise and service tax.”

23. Shri S.R. Wadhwa, former Chairman, Income Tax Settlement Commission in a memorandum submitted to the Committee, pointed out, inter alia, that the decisions of the Authority for Advance Rulings (Income Tax) in the recent years, and the attitude of the Government in not accepting some of the decisions and going to the Supreme Court, in writ petitions, had diminished, significantly, the utility of the mechanism for advance rulings, and more importantly, the confidence of the non-residents and the legal profession in the correctness of the rulings.

24. Asked to furnish their response on the points raised by Shri Wadhwa the Department of Revenue, in a written reply stated:

“Out of 547 rulings pronounced by AAR (IT), 542 (99%) have resulted in finalization of issues involved. Only in one case has the Department filed SLP before the Hon’ble Supreme Court and in 4 cases applicants have filed SLP. As far as AAR (Central Excise, Customs and Service Tax) is concerned, neither the Department nor any applicant has gone to the Supreme Court against any decision. The year-wise applications received in both the authorities are as under:

Financial year	Applications received in AAR (IT)	Applications received in AAR (C&CE)
1993-1994	5	
1994-95	15	-
1995-96	67	-
1996-97	65	-
1997-98	69	-
1998-99	47	-
1999-2000	31	-
2000-01	39	-
2001-02	55	-
2002-03	16	1
2003-04	26	6
2004-05	23	16
2005-06	65	57
2006-07	22	14
2007-08	26	18
Total	571	112

From the above, it is revealed that there is no definite pattern in the number of applications received by both authorities on an annual basis. The Government has felt the need to invoke the extraordinary jurisdiction of the Supreme Court in only one case out of over 600 cases where rulings were pronounced by the two Authorities for Advance Rulings. “

25. As indicated in Chapter I of this report, the scope of the scheme of advance rulings under the Income Tax Act was expanded by way of amendments carried out in 1998 and again in 2000 and 2003, for including, inter alia, decisions

in relation to, an assessment pending before an income-tax authority or Tribunal in case of a resident who falls within such class or category of persons as the Central Government may notify; transactions, which have been undertaken or proposed to be undertaken by a non-resident applicant; and applications of residents on the tax liability of non-resident with whom a transaction is proposed or undertaken.

26. Asked to furnish a category-wise break-up of the applications (non-residents, residents and PSUs) who may have approached the Authority for Advance Rulings (Income Tax) over the years, the Department furnished the following information:

FY	Applicants			
	Non-Residents	Residents	PSUs	Total
1993-94	05	00	00	5
1994-95	15	00	00	15
1995-96	67	00	00	67
1996-97	65	00	00	65
1997-98	69	00	00	69
1998-99	46	01	00	47
1999-00	25	03	03	31
2000-01	11	13	15	39
2001-02	40	10	05	55
2002-03	09	05	02	16
2003-04	12	08	06	26
2004-05	14	05	04	23
2005-06	51	09	05	65
2006-07	13	06	03	22
2007-08	13	11	02	26
April – May, 2008	06	00	00	06
Total	461	71	45	577

27. The scope of the Authority for Advance Rulings (Central Excise, Customs and Service Tax) has also been expanded by way of amendments carried out in 2005 to cover inter alia 'a non-resident setting up a joint venture in India, a resident setting up a joint venture in India, a wholly owned subsidiary Indian Company, of which the holding company is a foreign company, and a joint venture, with one or more non-residents having substantial interest.

28. Asked to furnish the reasons for the number of applications filed before the Authority being very few despite expanding the ambit and scope of the scheme; and a category-wise break-up (Customs, Excise and Service Tax) of the number of applications filed /rulings pronounced by the Authority, the Department of Revenue, in a written reply informed:

- (i) Rationalization of tax structure, liberalization of rules and procedure and harmonization of Customs & Excise Tariff with international tariff structure has yielded results in reducing the disputes relating to assessment of goods. This may have led to taxpayers not seeking advance rulings from the Authority.
- (ii) The receipt and disposal of applications – financial year-wise in Authority for Advance Rulings (Central Excise, Customs and Service Tax) is as under:-

Sr. No	Financial year	Opening balance			No. of applications received			No. of applications disposed						No. of applications pending at the close of the year			Remarks
								Rulings			Orders						
		CE	Cus	ST	CE	Cus	ST	CE	Cus	ST	CE	Cus	ST	CE	Cus	ST	
1	2	3a	3b	3c	4a	4b	4c	5a	5b	5c	5d	5e	5f	6a	6b	6c	7
1	2002-03	-	-	-	1	-	-	1	-	-	-	-	-	-	-	-	
2	2003-04	-	-	-	1	4	1	-	1	-	1	-	1	-	3	-	
3	2004-05	-	3	-	2	11	3	-	4	-	2	3	2	-	6	1	One Cus. application withdrawn within 30 days.
4	2005-06	-	6	1	4	50	3	1	54	2	-	1	1	3	1	-	One CE application withdrawn within 30 days.
5	2006-07	3	1	-	1	6	7	3	1	-	-	4	6	1	2	1	
6	2007-08	1	2	1	3	8	7	1	3	2	1	2	4	6	1	2	
	Total				12	79	21	6	63	4	4	10	14	6	1	2	02 application withdrawn within 30 days.

SUMMARY

• Applications received	-	112
• Disposal		
○ (i) Rulings	-	73
○ (ii) Orders	-	28
○ (iii) Withdrawn within 30 days	-	02
• Total (Disposal)	-	103
• Applications pending	-	09”

29. Responding to a question on the reasons for the number of applicants approaching the Authorities for Advance Rulings being very few, the Secretary, Department of Revenue, while tendering evidence before the Committee stated:

“I cannot take a final position in this situation. I have no data to suggest people come in having a partner or appointing a firm to take care of their issues.”

30. Asked further whether it would not be desirable for the Department to conduct an in-house-study to assess the reasons for the number of applications filed with the Authorities being very few, the Revenue Secretary stated:

“If the Committee desires, we will have a survey done”

Necessity of the system of advance rulings:

31. The objective of setting up of the Authority for Advance Rulings (Income Tax) was to reduce needless litigation and promote better taxpayer relations in respect of transactions involving non-residents. Similarly, Authority for Advance Rulings (Central Excise, Customs and Service Tax) was set up to provide binding rulings on important issues so that the intending foreign investors will have a clear cut indication of their duty liability in advance.

32. According to the Department of Revenue, out of the 547 rulings pronounced by the Authority for Advance Rulings (IT) till date, 542 have resulted in finalization of the issues involved. Similarly, Authority for Advance Rulings (Central Excise, Customs and Service Tax) has disposed off 101 applications. Hence, the Department of Revenue is of the opinion that both the Authorities have been successful in achieving the stated objectives.

33. The Committee desired to have details of the total volume of demands raised by Government on assesseees on account of Income Tax, Customs Duty and Central Excise Duty but have remained locked in dispute with various adjudicating authorities as on March 31, 2008.

34. The Department of Revenue, in this regard, in a written reply, furnished the following information:

“Outstanding demand raised by the Income-tax Department and its available details as on 31.03.2008 are as follows:-

(Rupees in crores)

Total Demand Raised	Disputed demand					
	Less than one year	Between one and two years	Between two and five years	Between five and ten years	More than 10 years	Total
1,24,274	20,419	17,625	18,070	10,781	678	67,573

The total demand raised against the assesseees on account of Customs duty and Central Excise Duty and cases pending before various adjudicating authorities as on March 31, 2008 with age-wise break up is as follows:-

Sl. No.	Indirect taxation	No. of cases	Amount involved (Rupees in crores)	Age-wise break-up (number of cases)			
				Upto 6 months	6-12 months	1-3 years	Above 3 years
1	Customs	4,806	2,497	3,465	659	541	141
2.	Excise	11,594	8,348	9,055	2,089	445	5

35. Asked further whether the Department could furnish a break-up of the total volume of demands raised by the Government on non-residents assesseees,

including Multi National Enterprises (MNEs) etc. on account of income tax, customs and excise duties and service tax which may have remained locked in dispute with various adjudicating authorities, the Department of Revenue, in reply informed:

“The Central Board of Excise and Customs (CBEC) and Central Board of Direct Taxes (CBDT) maintain updated data of all the revenue locked up in Demands pending adjudication with various authorities and give priority to the recovery thereof wherever required. Therefore, there has been no need so far to make a distinction between Demands raised on Residents and Non-Residents either at the Board level or at the field level.

If separate data on the total Demands against Non-Residents and MNEs is required to be collected, it would be a very time consuming exercise which would require examination of individual files all across the country.”

36. As FDI and other investments (FII) were on the increase, the Committee desired to know whether it was, at all, essential to continue with the system of Authority for Advance Rulings in the present scenario. The Department of Revenue, in this regard, in a written reply, stated:

“The need for such a mechanism is to facilitate non residents who are not familiar with the Indian tax system and have the need to clear misapprehensions and ambiguities. In the context of increasing trade and commerce between countries and globalization of businesses, the AAR continues to serve an important purpose. Till such time as the national legislations on issues that have international significance develop fully and gain widespread acceptance, it is considered necessary to have a mechanism for such advance rulings.”

37. In response to question posed by the Committee on whether the purpose with which the Authorities were established was being served and whether it would not be appropriate to discontinue the system, the Revenue Secretary, while rendering evidence stated:

“We have taken a decision that single Authority should

continue. We welcome the suggestions and advice of the hon. Committee. We will duly reflect on them and take a final decision.”

38. In this regard, the Secretary also added:

“.....especially in today’s times, in a sense, we are back into certain economic turbulence. We do not need to have two separate authority. We do believe that a single authority should continue. Sometime later may be we can visit the issue once again and then further a view can be taken with respect to reforms and making taxation, etc. simple. We are open to it. That is our endeavour.”

39. An analysis of the number of applications received in the Authority for Advance Rulings (Income Tax) and Authority for Advance Rulings (Customs & Central Excise) reveals that over the years the number of applications received by these Authorities has declined and during the two year period – 2006-07 and 2007-08, the former received on an average just 24 applications and the later 16 applications a year. Obviously, these Authorities did not have adequate work to justify their existence. It is doubtful whether the proposed Common Authority for Advance Rulings too will have adequate work to justify its constitution and continuance.

40. The Authority for Advance Rulings (Income Tax) was set up in 1993 with the objective of reducing needless litigation and promote better tax payer relations in respect of transactions involving non-residents and Authority for Advance Rulings (Customs & Central Excise) was set up in 2002 to provide binding rulings on important issues so that the intending foreign investors will have a clear indication of their duty liability in advance. Though the Department of Revenue is of the opinion that both

the Authorities have been successful in achieving these objectives, the Department have no separate data to substantiate their claim. The Department have no data indicating the demands raised on non-residents regarding income tax, customs, excise duties and service tax and the related amount locked in dispute. The Committee desire that an exercise in this regard be undertaken with a view to assessing the effectiveness of the system of Advance Rulings and to decide about the continuance or otherwise of the system, taking into account the need to ensure necessary transparency, accountability, equity and level playing field to domestic industries including Central Public Sector Enterprises (CPSEs).

III. Scope and ambit of Advance Rulings

i) Expansion of Scope:

41. The representatives of FIEO, PHDCCI and the ICAI, in the Memoranda submitted to the Committee and while presenting their views on the Bill before the Committee emphasized on widening the scope of the scheme of advance rulings to cover resident assesseees as well to obtain advance rulings on the potential tax or duty liabilities on their projected investments/enterprises, instead of restricting the scope of the facility to non-residents and public sector undertakings as applicable at present.

42. Questioned whether widening of the scope of the schemes of advance rulings, as suggested, would not result in a sharp increase in the number of applications and extra ordinary delay in the adjudicating process, a representative of PHDCCI, while presenting his views before the Committee, stated inter alia.

“We are conscious of this fact and this can be addressed by putting a ceiling on the question of amount involved or secondly substantial question of law as it is the normal case where appeal is not allowed.

..... So one provision can be kept where there is a substantial question of law is involved on interpretation, then that application can be entertained. This will reduce the number of applications which will come up.

Secondly, there can be some monetary limit that the amount involved should not be less than some rupees/ lakhs. That can also address the issue.

The third alternative can be, as my two colleagues have spoken about it, it can be allowed to corporates.”

43. Emphasizing the need for expanding the ambit of the scheme of advance rulings, the representative of PHDCCI also added:

“What is happening, every year so many new amendments are carried out to Income Tax and to other Indirect Taxes. Immediately thereafter interpretation of issues come up. After

a lot of litigations of three years or five years, then an amendment is brought in the legislation clarifying what was the intention. So by that time, many things happen in between. The moment the legislation is enacted, the person having any issue concerning him, he will file an application. Another idea can be that we can put a reasonable amount of fees for any applicant to make an application so that the cost is also covered of the Authority is also covered. So this will discourage those who want to have a frivolous or a minor issue getting reported.”

44. In essence, the suggestions made by the representatives centered on expanding the ambit of the scheme of advance rulings to cover resident assesseees by restricting the eligible applicants to corporates, or alternatively, laying down a financial limit in terms of tax implications, prescribing a higher processing fee etc.

45. Asked to furnish the views of the Department on the suggestions of the Chambers of Commerce, in particular on the need for expanding the scope of the Authority for Advance Rulings to cover transactions of resident assesseees so as to enable in having advance knowledge of likely tax implications of transactions in cases of ambiguity and uncertainty, and thereby minimize wasteful and protracted litigations, the Department of Revenue, in a written reply stated:

“The Government’s intention to constitute the Authority for Advance Rulings for direct taxes was announced in the Finance Bill, 1992 for giving advance rulings in respect of transactions involving non-residents in the interest of avoiding needless litigation and promoting better taxpayer relations. On the indirect tax side, the scheme of Advance Ruling was incorporated in the statute keeping in view the need of foreign investors to be assured in advance of their likely indirect tax liability. In the Statement of Objects in the Finance Bill, 1999, it was laid down before the Parliament that the said scheme has been introduced for giving binding rulings in respect of activities of import/export/manufacture and production of goods involving non-

residents in advance of the commencement of the activities to avoid needless litigation and to provide better compliance with the provisions of the Act. The Advance Ruling mechanism presently in vogue is strictly in consonance with the aims and objective with which the said Authority was set up. Further if all residents are brought under the purview of AAR, the system may get choked with all parties short circuiting assessing authorities, appellate authorities, tribunals, etc. This is not the intention of setting up the AARs. Hence, it may not be desirable to extend the jurisdiction of AARs to all residents.”

46. News reports and analysis indicate that the work of the authorities on (tax) rulings could be increased and made more effective by expanding the ambit to cover, tax payers operating under Large Tax Paying Units (LTUs), Indian public limited companies, large infrastructure projects etc. Asked to furnish their views on such reportage and analysis, the Department of Revenue, in a written reply, stated inter alia:

“The feasibility of extending the advance ruling facility to Large Tax paying Units (LTUs) was examined and it was observed that the facility of advance ruling is a special provision to facilitate entities, not familiar with the domestic laws, so that they get speedier and advance decisions on classification of goods, and services etc. at the beginning of their operations in India. Extending the scheme to LTUs would lead to discrimination against other domestic units. The existing units operating as Large Tax Payers are well aware of the law and, therefore, may appropriately use the remedy available under the respective statute for resolution of an issue. Hence, it was considered not appropriate to extend the facility of advance rulings to LTUs. As regards the Indian Public Limited Companies, the facility of advance ruling has been extended in special circumstances in the

Income Tax statute. Under the Customs Act also, the scope of the 'applicant' has been expanded to cover a resident belonging to a category of persons that is notified by the Central Government."

47. Questioned about the statutory means or remedies that may be available to resident assesseees in particular in seeking clarifications on tax implications on proposed transactions etc., the Department of Revenue, informed inter alia:

"The only other mechanism available is clarifications issued by the respective Boards under sections 119 of the Income-tax Act, 1961, 151A of the Customs Act, 1962, 37B of the Central Excise Act, 1944 and 83 of the Finance Act, 1994."

48. Section 119 of the Income Tax Act, 1961 inter alia enables the Board (CBDT) to issue such orders, instructions and directions to other Income Tax Authorities as it may deem fit for the proper administration of the Act, Further, Section 151A of the Customs Act, 1962, 37B of the Central Excise Act, 1944 and 83 of the Finance Bill, 1994 enable the Board (CBEC) to issue instructions and directions for the purpose of maintaining uniformity on the classification of goods, or with respect to the levy of duty thereon, etc.

49. Queried whether the relevant sections of the taxation laws cited by the Department enable resident assesseees to approach the Boards to have advance knowledge of likely tax implications on transactions in case of ambiguity and uncertainty, the Department, in reply stated:

"The relevant Sections empower the respective revenue boards to issue orders, instructions and directions to their field formations for ensuring uniformity for proper administration of the relevant Acts. However, such instructions/directions should not relate to particular assessments/cases and should not be in the nature of directions to Appeal Commissioners. Ambiguity that hamper the efficient management of assessment may be brought to the notice of the two Boards by the field formations or individual assesseees or otherwise and the Boards may issue general orders/instructions on the subject."

50. Further, in response to a related issue raised on the provisions of the proposed Bill not containing any additional 'reform' element on the scheme of advance ruling, the Department, in reply stated inter alia:

“The Bill is mainly administrative in nature and has not been introduced with the intent to bring in any legal ‘reforms’ in the scheme of advance rulings as such.”

- ii) Scope of Advance Rulings (Income Tax) vis-à-vis Advance Rulings (Central Excise, Customs and Service Tax)

51. A comparative account of the scope of advance rulings (Income Tax) vis-à-vis the scheme pertaining to Excise, Customs and Service Tax as furnished by the Department of Revenue reveal as follows:

Sl. No.	Scope of Advance Ruling	Under the Income Tax provision	Under the Central Excise, Customs & Service Tax provisions
1.	Persons eligible to seek Advance Rulings	<p>Section 245N of the Income Act, 1961 provides that 'applicant' means any person who –</p> <p>(i) is a non-resident</p> <p>(ii) is a resident who has undertaken or proposes to undertake a transaction with a non-resident</p> <p>(iii) is a resident falling within such class or category of person as the Central Government may notify –</p> <p>(a public sector company for determination or decision by the Authority in respect of an issue which is pending before any Income Tax authority or Appellate Tribunal.).</p>	<p>Sections 28E of the Customs Act, 1962 / Section 23A of the Central Excise Act, 1944 and Section 96A of the Finance Act, 1994 provide that an 'applicant' means –</p> <p>(i) a non-resident setting up a joint venture in India in collaboration with a non-resident or a resident ; or</p> <p>(ii) a resident setting up a joint venture in India in collaboration with a non-resident; or</p> <p>(iii) a wholly owned subsidiary Indian company, of which holding company is a foreign company.</p> <p>(iv) a resident falling within any such class or category of persons as the Central Government may notify –</p> <p>(a resident who proposes to import any goods from Republic of Singapore under Comprehensive Economic Co-operation Agreement between Republic of India and Republic of Singapore dated 29.6.2005 for the purpose of seeking advance ruling in respect of determination of origin of goods.).</p>

2.	Stage of seeking advance ruling	Advance ruling can be sought in relation to a transaction, which has been undertaken or is proposed to be undertaken by an applicant.	Advance ruling can be sought in relation to a transaction, which is proposed to be undertaken by an applicant.
3.	Areas in which advance ruling can be sought	(a) Any question of law or of fact in relation to a transaction which has been undertaken or is proposed to be undertaken by a non-resident applicant/ resident applicant with a non-resident. Any question of law or of fact relating to computation of total income in respect of an issue pertaining to a public sector undertaking which was pending before any Income Tax authority or the Appellate Tribunal.	The questions on which advance ruling can be sought have been enumerated in the statute and broadly cover issues relating to assessment of goods /services in its entirety. The questions relate to (i) classification of goods /taxable services; (ii) applicability of notification prescribing rate of duty/ tax; (iii) principles of valuation of goods/ taxable services; (iv) admissibility of credit of duty/service tax; (v) determination of liability to duty/ tax on goods/ services under the Act; (vi) determination of origin of goods.

52. The proposal to constitute a Common Authority for Advance (Tax) Rulings has been initiated primarily because of the few applications that were filed before the Authority for Advance Rulings (Central Excise, Customs and Service Tax). Considering this aspect and the fact that the scope of advance (tax) rulings (Income Tax) encompasses a much wider area vis-à-vis the schemes pertaining to Excise, Customs and Service Tax to cover transactions already undertaken as well as issues pending before any Income tax Authority, appellate tribunal etc., the Committee desired to know whether the Government was contemplating or considering expanding the ambit of schemes pertaining to indirect taxes as well.

53. The Department of Revenue, in this regard, in a written reply stated as follows:

“currently there is no such proposal for expansion of the ambit of the existing schemes under the indirect taxes.”

54. Advance Rulings have been essentially for non-residents except certain specified categories of residents. The only mechanism available for the resident assessee is clarifications issued by the CBDT and CBEC, which may not be a viable alternative to the system of specific rulings. The PHD Chambers of Commerce and some other organizations have suggested that the ambit of the proposed Common Authority could be expanded to cover a larger section of resident assessee on the basis of pre-fixed criteria involving, *inter-alia* large corporates, specified businesses and entrepreneurial activities etc. The Committee agree with the contention of the Department of Revenue that extending the scheme only to large tax paying units would lead to discrimination against other domestic units. If all residents are brought under the purview of Authority for Advance Rulings, the system may get choked with all parties short-circuiting assessing authorities, appellate authorities, tribunals, etc. The Committee, therefore, suggest that in case it is decided to continue with the system of Advance Rulings, there should be a provision enabling any resident assessee to seek a ruling on matters of interpretation involving substantial question of law.

IV. Miscellaneous Matters

A. International Comparison

55. Salient features of advance rulings are as follows:

- A ruling can be amended or modified before being given effect to if there is a change in law or facts based on which the said ruling was pronounced.
- Authority can declare a ruling void, if the ruling is obtained by fraud or misrepresentation of facts.
- Ruling is binding on the applicant and the Department. No provision for appeal is provided in the respective Acts.
- The writ jurisdiction of the High Court in terms of Article 226 of the Constitution can be invoked.
- Jurisdiction as conferred upon the Supreme Court under Article 136 of the Constitution can also be invoked.

56. Indicating the circumstances in which the Authority may declare a ruling void and the nature of appeal process on the rulings pronounced, the Department of Revenue, in a written note stated inter alia:

“...if the Authority finds, on a representation made to it by the Commissioner or otherwise, that the ruling has been obtained by fraud or misrepresentation of facts then it can declare such ruling void. The rulings can also be amended or modified before being given effect to by the assessing authority if there has been a change in law or facts based on which the said ruling was pronounced.

There is no specific provision in the proposed Bill, which allows the filing of an SLP before the Hon’ble Supreme Court. However, SLP can be filed before the Hon’ble Supreme Court under Article 136 of the Constitution of India and as such specific provisions under the Acts for filing of SLPs are not required. Writ Petition can also be filed before High Courts under Article 226 of the Constitution of India.”

57. The representatives of PHDCCI, in their Memorandum and while presenting their views before the Committee emphasized on the need for making explicit provisions in the Bill for reconsideration of rulings by the Authority and for appeal in the Supreme Court on the orders/rulings.

58. Asked to furnish their response to the suggestions made, the Department of Revenue, in a written reply stated:

“The advance ruling authorities were set up to give binding rulings expeditiously at the very first stage itself. There are existing provisions for the authorities to modify/rectify their rulings if there is any mistake of law or facts. The extraordinary jurisdiction of the Supreme Court has been invoked against very few rulings pronounced by the Authorities. The experience so far bears out that there may not be any necessity for specific provisions for review/reconsideration of rulings.”

59. As informed by the Department, on the direct taxes side, the applicants had filed SLPs in four cases, while the Department approached the Supreme Court in one case, and there have been no SLPs/writs on the rulings on indirect taxes side.

60. A comparative account of advance rulings schemes as prevalent in India vis-à-vis the developed countries as furnished by the Department of Revenue, is as follows:

	U.S.A.	UK	Sweden	Canada	India
Which Authority gives advance rulings?	IRS National Office (for Letter Rulings)	Inland Revenue Head Office (for Private Rulings)	Council for Advance Tax Rulings	Rulings Directorate of Revenue Canada	Authorities for Advance Rulings
Are the tax authorities bound by advance ruling on legal questions?	Yes.	Yes.	Yes	Yes	Yes

Does the Department have a right to appeal?	No. The Ruling is given by the Department itself	No. The Ruling is given by the Department itself	Yes	No. The Ruling is given by the Department itself	Writ jurisdiction of the High Courts under Article 226 and extraordinary jurisdiction of the Supreme Court under Article 136 of the Constitution can be invoked.
Is it binding on the tax payer?	No	No	No	No	Yes
Does the taxpayer have a right to appeal?	Not required as Ruling is not binding on taxpayer	Not required as Ruling is not binding on taxpayer	Not required as Ruling is not binding on taxpayer	Not required as Ruling is not binding on taxpayer	Writ jurisdiction of the High Courts under Article 226 and extraordinary jurisdiction of the Supreme Court under Article 136 of the Constitution can be invoked.

61. Responding to a query on the reasons for the scheme of advance rulings in India being essentially different from that of the other Countries, where the rulings were not binding on the applicants; and the need felt for providing an appeal mechanism on the Authorities rulings, the Secretary, Department of Revenue, while tendering evidence, stated inter alia:

“.....over 600 cases were decided and only in five of them, the necessity for questioning the ruling has arisen. Four times by the private parties concerned and one time by the Government.the rulings are binding on both, that is the party as well as the Government. At the same time the extraordinary jurisdiction of the Constitution and the special powers under Article 226 and Article 136 are available and those were taken recourse to. So, the decision not to provide an appeal provision in the Act was to make it binding. At the same time the Constitutional provision that there shall be recourse to high courts and Supreme Court in the event of somebody so desiring is also available. That would answer the appeal provision situation. With respect to why countries adopt certain positions and approaches, we have our own choices of democratic processes. We have chosen a particular way approved by Parliament and that is how we have gone. So, we need not be bound down by what a particular country does. After all, we have not adopted a foreign legislation totally.

B. Composition of the Authority and term of office of Members – Clause 4 and Clause 5

62. Clause 4 relating to the Composition of the Authority reads as under:

“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 Revenue Service, who is, or has been, or is qualified to be, a Member of the Central Board of Direct Taxes;

(c) an officer of the Indian Revenue Service (Customs and Central Excise), who is, or has been, or is qualified to be, a Member of the Central Board of Excise and Customs;

(d) an officer of the Indian Legal Service, who is, or has been, or is qualified to be, an Additional Secretary to the Government of India:

Provided that for giving advance rulings—

(i) under the Income-tax Act, 1961, the Authority shall exclude the Member under clause (c); and

(ii) under the Acts other than the Income-tax Act, 1961, the Authority shall exclude the Member under clause (b).”

63. Clause 5, pertaining to the term of office of Members provides as follows:

“The Chairperson or other Member shall hold office as such for a term of five years from the date on which he enters upon his office or until he attains,—

(a) in the case of the Chairperson, the age of seventy years; and

(b) in the case of any other Member, the age of sixty-five years, whichever is earlier.”

i) Composition of the Authority:

64. In the existing authorities there are two posts of Chairman, one each in AAR (IT) and AAR (Central Excise, Customs and Service Tax). There are two posts of Member (Revenue) and two posts of Member (Legal), one each in both the authorities. Also, there are two posts of Commissioners, one in the AAR (IT), which is held by an officer of the IRS (IT) and another in the AAR (Central Excise, Customs and Service Tax), which is held by an officer of the IRS (C&CE).

65. In terms of the provisions of Clause 4, the proposed 'Authority for Advance Rulings on Central Taxes' shall consist of (i) a Chairperson, who is a retired Judge of the Supreme Court (ii) an officer of the Indian Revenue Service, who is, or has been, or is qualified to be, a Member of the Central Board of Direct Taxes (iii) an officer of the Indian Revenue Service (Customs and Central Excise), who is, or has been, or is qualified to be, a Member of the Central Board of Excise and Customs and (iv) an officer of the Indian Legal Service, who is, or has been, or is qualified to be, an Additional Secretary to the Government of India.

66. As against two posts of Chairmen, 4 posts of Members and two posts of Commissioners in the existing authorities, there will be one post of Chairman, 3 posts of Members and 1 post of Commissioner in the merged Authority.

67. Further, as per the scheme of functioning of the Authority as envisaged terms of the provisions of Clause 4, when the Authority considers a direct tax issue, the Member who is a customs officer will not sit and the third Member will be the Member from the income-tax side. At the time when the Authority considers an indirect tax issue, the third Member will be the Member from the customs side and the Member from income-tax will not sit for the proceedings. For Central Sales Tax issues, the Authority will also function as the Central Sales Tax Appellate Authority. For discharging this function, both Members from the two Indian Revenue Services will not participate in

proceedings and instead a sales-tax Member appointed in terms of the Central Sales Tax Act will be a Member of the Authority.

68. Shri S.R. Wadhwa, former Chairman, ITAT, in his Memorandum submitted to the Committee pointed out, inter alia that lack of public confidence in the selection procedure for constituting the Authority, and limiting the field of choice for selection of members of the Authority (to the Indian Revenue Service Officers and Indian Judicial Service Officers) to be the main reasons for the Authority for Advance Rulings being no longer a preferred method of ensuring certainty in relation to the tax implications of cross-border transactions. It has been suggested in the Memorandum that apart from the qualifications prescribed for the Indian Revenue Service Officers and Indian Legal Service Officers in terms of sub-clauses (b), (c) and (d) of Clause 4, a minimum experience of five years of dealing with problems relating to international taxation should be added for this category of Members; and additionally serving Members of ITAT and CESTAT with a minimum experience of 30 years in tax practice inclusive of at least 10 years in international taxation who may be eligible to become judges of the High Court could be made eligible to become Members of the Authority.

69. Additionally, the representative of ICAI, while presenting his views on the Bill before the Committee expressed the need for including a Member of the ICAI in the Authority, as in the case of ITAT so as to enable in providing technical expertise to the Authority.

70. Asked to detail the selection procedure stipulated and followed for appointment of the Chairman and Members of the Authority, the Department, in a written reply stated, inter alia:

“.....The selection process of the Chairman and Members of the Authorities has not been specified in any Act or Rules. The Income Tax Act and the Customs Act however lay down the eligibility criterion for selection of Chairmen and Members of both the Authorities for Advance Rulings as under:

- (a) a Chairman, who is a retired Judge of the Supreme Court;
- (b) an officer of the Indian Revenue Service/Indian Customs and Central Excise Service who is qualified to be a Member of the respective revenue board;

- (c) an officer of the Indian Legal Service who is, or is qualified to be, an Additional Secretary to the Government of India.

As per prevalent procedure, for the post of Chairman, who is a retired Judge of the Supreme Court, nomination is obtained from the Chief Justice of India and appointment is made with the approval of the Appointments Committee of Cabinet. For the posts of Technical Members, applications are called from eligible officers of the two Indian Revenue Services and selection is made by the Central Government on the recommendation of a Selection Committee comprising Cabinet Secretary, Principal Secretary to PM, Home Secretary, Revenue Secretary and Secretary (Personnel). The same Selection Committee recommends the selection of Chairmen and Members of the two revenue boards. For the post of Member (Legal), nominations are obtained from Ministry of Law and appointment is made with the approval of the Appointments Committee of Cabinet.”

71. On the suggestion made for expanding the ambit of the selection criteria of members of the Authority, the response of the Department of Revenue reads as follows:

“The qualifications of Chairmen and Members are laid down in the Acts which provide that Members should be appointed from amongst those IRS/IRS(C&CE) officers who are qualified to be Members of the respective revenue boards. These are senior officers who have handled tax matters for several years. However, as a general rule, the Selection Committee can adopt its own procedures to recommend suitable candidates. Members of the ITAT/ CESTAT who are qualified to be Members of the respective revenue boards are eligible for selection as Members of the AARs.”

72. On the issue of including a member of ICAI in the Authority for providing technical expertise, the Department’s reply states, inter alia:

“Technical expertise to the Authorities is provided by the member from the respective Indian Revenue Services. Hence there may not be a need to widen the scope for selection of Members.”

73. Questioned whether it would not be appropriate to have the rules/prescribe the procedure for selection of Members of the Authority, which is

presently not specified, the Department, in reply informed:

“New rules will be drafted after the “Authority for Advance Rulings on Central Taxes Bill, 2007” is passed as Law by the Parliament. Prescribing the procedure for selection of Members of the Authority may be considered at that stage.”

ii) Term of Office:

74. The existing Rules governing the terms and conditions of service of Chairmen and Members of the AARs provide that the Chairman and Members hold office for a term of three years but are eligible for re-appointment for another term of three years. Chairmen and Members can be in office till they attain the ages of 70 and 62 years respectively.

75. In term of the provisions of Clause 5 of the Bill, the Chairman and members shall hold office for a term of five years or till attaining the age of 70 years and 65 years respectively, whichever is earlier. There is no provision for re-appointment.

76. The Committee, while taking evidence of the representatives of the Department of Revenue felt that the term of five years for the Chairman and Members of the Authority, as proposed, was too long a period, which may not facilitate in making an objective assessment of the working of the Authority. In response to the view expressed by the Committee, the Department, in a written reply stated inter alia:

“The change in tenures of Chairmen and members to five years has been finalized in consultation with the Ministry of Law and Department of Personnel & Training.”

77. By way of elaborating the rationale for proposing to increase the term of the Chairman and Members of the proposed Common Authority from the existing position of three years to five years; and the retirement age of the members from 62 years to 65 years, the Department, in a post evidence reply informed:

“The provision of sixty five years was proposed upon the advice of Department of Personnel & Training. The DOP&T had at that time taken a view that tenure of five years and age limit of

sixty-five years be kept for Members. There was also thinking in the Government that there should be uniformity in the terms and conditions of appointment etc. of Chairpersons/Vice-Chairpersons/Members in various Tribunals/Commissions/Statutory Regulatory Authorities etc. set up by the Government. DOP&T had advised the limits of five years and sixty-five years keeping in view the similar stand taken by them in few other cases to ensure uniformity, continuity and effective discharge of functions atleast for a period of five years. The existing provisions in two AARs provide for a three year term with one re-appointment for the Chairmen and Members which implies a maximum tenure of six years. DOP&T's advice was further on consideration that no provision for re-appointment was proposed in the Bill."

C. Officers and staff of the Authority - Clause 11 and Clause 13 (3)

78. Clause 11 relating to the staff of the Authority reads as under:

"The Central Government shall, in consultation with the Authority, provide the Authority with such officers and staff, as may be necessary, for the exercise of the powers and discharge of the functions of the Authority."

79. Further, Clause 13 (3) provides as follows:

"(3) The officers and other employees of the Authorities under sub-section (1), appointed to the sanctioned posts, shall be deemed to be the officers and other employees of the Authority constituted under section 3."

80. Savings in costs has been indicated to be a major benefit that would accrue following the merger of the existing two Authorities in terms of proposed Bill.

81. Asked to furnish details of the expenditure incurred on the two Authorities since their establishment, the Department of Revenue furnished the

following information:

Financial Year	Expenditure (in Rs. crore)	
	AAR (IT)	AAR (C&CE)
1993-94	1.10	-
1994-95	0.99	-
1995-96	0.81	-
1996-97	0.85	-
1997-98	0.85	-
1998-99	0.95	-
1999-00	1.03	-
2000-01	1.02	-
2001-02	1.15	0.50
2002-03	1.03	0.95
2003-04	1.24	1.03
2004-05	1.27	1.08
2005-06	1.31	1.12
2006-07	1.43	1.24
2007-08	1.70	1.32

82. Also asked to furnish details of the number of permanent/temporary posts of officers/supporting staff presently sanctioned and the number of persons currently in position in the two Authorities the Department furnished the following information:

	No. of Sanctioned posts	No. of persons in position against sanctioned post
AAR(IT)	36	30
AAR(C&CE)	12	08
Total	48	38

83. Questioned on the likely reduction in expenditure and the resultant savings on account of merging the two Authorities by way of reduction in number of sanctioned/temporary posts etc., the Department, furnished the following information:

No. of posts	Name of posts	Scale of pay (Rs.)	Annual average cost (Rs.)	Total savings (Rs.)	Remarks
1	Chairman	30000 (fixed)	869880	869880	Notional
1	Member	22400-26000	728460	728460	Notional
1	Commissioner	18400-22400	618974	618974	
1	PPS	10000-15200	383665	383665	Notional
2	PS	6500-10500	251592	503184	
			TOTAL	11,22,158	Actual

D. Transfer of Pending Cases – Clause 14

84. Clause 14 relating to transfer of pending cases to the Common Authority proposed to be set up provides as under:

“Every application or other proceeding pending before the Authority for Advance Rulings constituted under section 245-O of the Income-tax Act, 1961, functioning as such and as the Central Sales Tax Appellate Authority under sub-section (I) of Section 24 of the Central Sales Tax Act, 1956, and the Authority for Advance Rulings (Central Excise, Customs and Service Tax constituted under section 28F of the Customs Act, 1962, shall stand transferred to the Authority on the appointed day.”

85. While the Authority for Advance Rulings (Income Tax) [under section 245 R (6) of the Income Tax Act] has been prescribed a time limit of six months for pronouncing the rulings on applications, the Authority for Advance Rulings (Central Excise, Customs and Service Tax) [under section 28 I (6) of the Customs Act] has been provided with three months’ time limit for giving rulings on applications brought before it.

86. Asked to furnish details of the number of applications and proceedings pending before the respective AARs as on May 31, 2008 indicating different age-wise break-ups of such pendencies, which could be transferred to the Authority to be constituted under the proposed Act, the Department of Revenue furnished the following information:

“Total and age-wise pendency of cases before the AAR (IT) as on 31st

May, 2008, is as follows:-

	Number of cases pending since				
	2008	2007	2006	2005 and earlier	Total
IT Act	10	16	02	02	30
CST Act	01	08	12	00	21

Details of pending cases before the AAR (C&CE) as on 31st May, 2008, are as follows:-

No. of applications pending disposal from the date of receipt					
	0-90 days	90-180 days	180-270 days	More than 270 days	Total
C. Excise	02	00	01	00	03
Customs	01	02	02	00	05
Service Tax	00	01	00	00	01
Total	03	03	03	00	09

87. Responding to a question on whether the time taken for disposal of applications by the two Authorities was not more than the mandated time frame for pronouncing the rulings, and the pendency position of cases with the Authorities quite large, the Revenue Secretary, while tendering evidence, stated:

“The pendency, as I said, appears to be large, but there are safeguards for disposal. But then, the inevitable, we still have the process of adjournments, etc. first time, I recall, we made a presentation when it had been mentioned the maximum disposal period was 131 days and in some case it was 90. That can change.”

88. **It has been suggested to the Committee that the Bill should provide for right to appeal against the advance rulings. The Committee feel that the extraordinary writ jurisdiction of the High Courts and the Supreme Court as the only available option may not fully serve the cause of assesseees. The Committee, therefore recommend that there should be an express provision in the Bill providing for right to appeal. The Committee also desire that there should be an enabling provision in the Bill for establishment of additional Benches of the**

Authority based on workload.

89. The merged Authority is to have one post of Chairman and three posts of members (two from the respective Revenue Services and one from the Indian Legal Service) as against two posts of Chairmen and four posts of members in the existing two Authorities. The Committee desire that the procedure for selecting the members, which is presently not stipulated under any Act or rule, be prescribed under the rules to be framed under the proposed Act so as to provide clarity and avoid possible misgivings on the selection procedure.

90. The Committee desire that while providing the proposed Authority with officers and staff as may be necessary in terms of the provisions of Clause 11, and transferring the officers and staff of the existing two Authorities to the proposed Common Authority in terms the provisions of Clause 13 (3), issues relating to cost effectiveness are appropriately considered and such of the posts of supporting staff etc. found to be redundant or in excess abolished. The Committee also note in this regard that while savings in costs has been indicated to be a major benefit that would accrue following the merger of the existing two Authorities, the expenditure incurred on the Authorities has increased from 1.65 crore in 2001-02 to Rs. 3.02 crore in 2007-08, while, the net savings or reduction in the establishment expenditure expected to accrue on account of reduction in the number of sanctioned posts consequent on the merger of the Authorities is expected to be just Rs. 11.22 lakhs. The Committee desire that efforts be made to bring down the establishment costs of the Authority substantially.

91. A total of 51 cases pertaining to the AAR (IT) and 9 cases pertaining to

the AAR (C&CE) were pending as on 31st May, 2008. It is observed that though the time limit for pronouncing rulings by the Authority on Advance Rulings (Income Tax) is six months, there have been 16 cases pending with it for over one year. Similarly, the Authority on Advance Rulings (Customs and Central Excise), which is to give rulings within three months has six cases pending over 180 days. The Committee trust that, as assured by the Revenue Secretary, the prescribed time frame for pronouncing the rulings by the Authority is adhered to.

NEW DELHI;
7 October, 2008
15 Asvina, 1930 (*Saka*)

ANANTH KUMAR,
Chairman,
Standing Committee on Finance.

Minutes of the Fifteenth sitting of the Standing Committee on Finance
The Committee sat on Friday, the 25th January, 2008 from 1100 hrs. to 1245 hrs.

PRESENT

Shri Ananth Kumar –Chairman

MEMBERS

LOK SABHA

2. Shri Gurudas Dasgupta
3. Shri Vijoy Krishna
4. Shri Bhartruhari Mahtab
5. Shri K.S. Rao
6. Shri A.R. Shaheen
7. Shri M.A. Kharabela Swain

RAJYA SABHA

2. Shri Santosh Bagrodia
3. Shri Raashid Alvi
4. Shri S.S. Ahluwalia
5. Shri C. Ramachandraiah
6. Shri Moinul Hassan

SECRETARIAT

- | | | |
|----------------------------|---|----------------------|
| 1. Dr. (Smt.) P.K. Sandhu | - | Additional Secretary |
| 2. Shri A.Louis Martin | - | Joint Secretary |
| 3. Shri T.G. Chandrasekhar | - | Deputy Secretary |

WITNESSES

1. Shri P.V. Bhide, Secretary, Revenue, Ministry of Finance
2. Shri B.K. Gupta, Member, CBEC
3. Shri A.J. Mazumdar, Member, CBDT
4. Shri Mukul Singhal, Joint Secretary
5. Shri Sanjay Puri, Commissioner-cum-Secretary (Income Tax)
6. Shri Rajendra Prakash, Commissioner (Customs & Central Excise)
7. Shri Rajeev Tandon, Commissioner (Legal-CBEC)

2. At the outset, the Chairman welcomed the representatives of the Ministry of Finance (Department of Revenue) to the sitting of the Committee and invited their attention to the provisions contained in Direction 55 of the Directions by the Speaker.

3. Then, the representatives of the Ministry of Finance briefed the Committee on the provisions contained in the Authority for Advance Rulings on Central Taxes Bill, 2007. The main issues discussed during the meeting relate to appropriateness of the time span of six months for pronouncing the Advance rulings, term of Chairman and Members of the Authority, quantum of work, international practice on the system of pre-determining tax liability, possibility of tax avoidance by obtaining Advance rulings owing to Double Taxation Avoidance Agreements with some countries, scope for review and appeal of the rulings etc. In regard to the points on which the representatives of the Department of Revenue could not readily respond, the Chairman desired them to furnish written replies early.

4. A verbatim record of proceedings has been kept.

The witnesses then withdrew.

5. XX XX XX XX XX XX

The Committee then adjourned.

Minutes of the Twenty-seventh sitting of the Standing Committee on Finance
The Committee sat on Thursday, the 19th June, 2008 from 1500 hrs. to 1615 hrs.

PRESENT

Shri Ananth Kumar –Chairman

MEMBERS

LOK SABHA

2. Shri Jaswant Singh Bishnoi
3. Shri Gurudas Dasgupta
4. Shri Shyama Charan Gupta
5. Shri Vijoy Krishna
6. Bhartruhari Mahtab
7. Shri Madhusudan Mistry
8. Shri Rupchand Pal
9. Shri P.S. Gadhavi
10. Shri M.A. Kharabela Swain

RAJYA SABHA

11. Shri S.S. Ahluwalia
12. Shri S. Anbalagan
13. Shri Moinul Hassan
14. Shri K.V.P. Ramachandra Rao
15. Shri Shivanand Tiwari

SECRETARIAT

1. Shri A. Louis Martin - Joint Secretary
2. Shri A.K. Singh - Director
3. Shri G. Srinivasulu - Deputy Secretary-II

WITNESSES

PHD Chamber of Commerce and Industry (PHDCCI)

1. Mr. R. Murlidharan, Member
2. Ms. Ruchira Chaudhury, Member
3. Mr Rohit Pandit, Additional Secretary

Federation of Indian Export Organisation (FIEO)

1. Shri Subhash Mittal, Member, Managing Committee
2. Shri Ajay Sahai, Director General
3. Shri Ashok Kumar, Dy. Director General

The Institute of Chartered Accountants of India (ICAI)

1. Shri Ved Jain, President
2. Shri M.P. Sarma, Chairman, Director Taxes Committee of the ICAI
3. Dr. Ashok Haldia, Secretary

2. At the outset, the Chairman welcomed the representatives of the PHD Chamber of Commerce and Industry (PHDCCI), Federation of Indian Export Organisation (FIEO) and the Institute of Chartered Accountants of India (ICAI) to the sitting of the Committee and invited their attention to the provisions contained in Direction 55 of the Directions by the Speaker.

3. The Committee then heard the views of the representatives on Authority for Advance Rulings on Central Taxes Bill, 2007. The issues discussed relate bringing Indian companies within ambit of the Bill, appointment of chairperson and its members, establishment of benches of authority in four metros, one dedicated bench for reconsideration of rulings, appellate authority, reasonable application amount for seeking rulings etc.

4. Thereafter, the Chairman directed the representatives to furnish notes on certain points raised by the Members to which replies were not readily available with them during the discussion.

5. A verbatim record of proceedings has been kept.
6. The witnesses then withdraw

The Committee then adjourned

Minutes of the Twenty-eighth sitting of the Standing Committee on Finance
The Committee sat on Friday, the 27th June, 2008 from 1500 hrs. to 1615 hrs.

PRESENT

Shri Ananth Kumar –Chairman

MEMBERS

LOK SABHA

2. Shri Jaswant Singh Bishnoi
3. Shri Shyama Charan Gupta
4. Shri Vijoy Krishna
5. Bhartruhari Mahtab
6. Shri Madhusudan Mistry
7. Shri Rupchand Pal
8. Shri P.S. Gadhavi
9. Shri K.S. Rao
10. Shri G.M. Siddeshwara
11. Shri M.A. Kharabela Swain

RAJYA SABHA

12. Shri C. Ramachandraiah
13. Shri S. Anbalagan
14. Shri Moinul Hassan
15. Shri K.V.P. Ramachandra Rao
16. Shri Shivanand Tiwari

SECRETARIAT

- | | |
|----------------------------|-----------------------|
| 1. Shri A. Louis Martin | - Joint Secretary |
| 2. Shri A.K. Singh | - Director |
| 3. Shri T.G. Chandrasekhar | - Deputy Secretary |
| 4. Shri G. Srinivasulu | - Deputy Secretary-II |

WITNESSES

Ministry of Finance (Department of Revenue)

1. Shri P.V. Bhide, Secretary
2. Shri J.K. Batra, Member, CBEC
3. Shri Vijay Singh, Member, CBEC
4. Mrs. Saroj Bala, Member, CBDT
5. Shri Mukul Singhal, Joint Secretary
6. Ms. Anita Kapur, Joint Secretary, CBDT

7. Shri Ashutosh Dixit, Joint Secretary, CBDT
8. Shri Sanjay Puri, Commissioner-cum-Secretary, Authority for Advance Rulings
9. Shri Rajendra Prakash, Commissioner, Authority for Advance Rulings

**Ministry of Law & Justice
(Legislative Department)**

1. Shri K.D. Singh, Secretary
2. Shri S.R. Dhaleta, Joint Secretary

**Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel and Training)**

Shri C.B. Paliwal, Joint Secretary, Department of Personnel and Training

2. At the outset, the Chairman welcomed the representatives of the Ministry of Finance (Department of Revenue), Ministry of Law & Justice and Department of Personnel and Training to the Sitting of the Committee and invited their attention to the provisions contained in Direction 55 of the Directions by the Speaker.

3. After a brief power point presentation, the Committee heard the views of the representatives on the Authority for Advance Rulings on Central Taxes Bill, 2007. The issues discussed relate to applicability of the Right to Information (RTI) Act on the Authority on Advance Rulings, delays in giving rulings on application, cases pending with the existing two Authorities and the duration of their pendency, need for providing a mechanism for appeal on the rulings, establishing additional Benches of the Authority and the necessity of having the Authority on Advance Rulings.

4. Thereafter, the Chairman directed the representatives to furnish notes on certain points raised by the Members to which replies were not readily available with them during the discussion.

5. A verbatim record of proceedings has been kept.
6. The witnesses then withdraw

The Committee then adjourned

Minutes of the sixth sitting of the Standing Committee on Finance (2008-09)

The Committee sat on Wednesday, the 24th September, 2008 from 1200 hrs. to 1345 hrs.

PRESENT

Shri Ananth Kumar –Chairman

MEMBERS

LOK SABHA

2. Shri Jaswant Singh Bishnoi
3. Shri Vijoy Krishna
4. Shri Bhartruhari Mahtab
5. Shri Madhusudan Mistry
6. Shri Rupchand Pal
7. Shri P.S. Gadhavi
8. Shri K.S. Rao
9. Shri Lakshman Seth
10. Shri A.R. Shaheen
11. Shri M.A. Kharabela Swain
12. Shri Suresh Prabhakar Prabhu

RAJYA SABHA

13. Shri Raashid Alvi
14. Shri M. Venkaiah Naidu
15. Shri S.S. Ahluwalia
16. Shri Vijay J. Darda
17. Shri S. Anbalagan
18. Shri Moinul Hassan
19. Shri Shivanand Tiwari

SECRETARIAT

- | | |
|----------------------------|-----------------------|
| 1. Shri A. Louis Martin | - Joint Secretary |
| 2. Shri A.K. Singh | - Director |
| 3. Shri T.G. Chandrasekhar | - Deputy Secretary |
| 3. Shri R.K. Suryanarayan | - Deputy Secretary-II |

2. At the outset, the Chairman welcomed the Members to the sitting of the Committee.

3. The Committee then took up for consideration, the draft report on the Authority for Advance Rulings on Central Taxes Bill, 2007. The Committee, after detailed deliberation, adopted the draft report with the modifications/amendments shown in the Annexure.

4. The Committee then authorized the Chairman to finalise the report in the light of the suggestions made by the Members and also to make consequential changes and present the report to the Hon'ble Speaker/Parliament.

5. XX XX XX XX XX.

The Committee then adjourned.

**[MODIFICATIONS/AMENDMENTS MADE BY THE STANDING
COMMITTEE ON FINANCE IN THEIR DRAFT REPORT ON
AUTHORITY FOR ADVANCE RULINGS ON CENTRAL TAXES BILL, 2007
AT THEIR SITTING HELD ON 24TH SEPTEMBER, 2008]**

Page	Para	Line	Amendments/Modifications
1	2	3	4
6	18	8	<p>For: “The Committee having examined the Bill from all angles, recommend it for consideration by the House.”</p> <p>Read: “The Committee having examined the Bill from all angles, propose it for consideration by the House, subject to following specific recommendations.”</p>
17	40	8	<p>After: “... continuance or otherwise of the system”</p> <p>Add: “taking into account the need to ensure necessary transparency, accountability, equity and level playing field to domestic industries including Central Public Sector Enterprises.”</p>

36		<p>After para 87, add new Para No. 88 and re-number the subsequent paras serially:</p> <p>“It has been suggested to the Committee that the Bill should provide for right to appeal against the advance rulings. The Committee feel that the extraordinary writ jurisdiction of the High Courts and the Supreme Court as the only available option may not fully serve the cause of assesseees. The Committee, therefore recommend that there should be an express provision in the Bill providing for right to appeal. The Committee also desire that there should be an enabling provision in the Bill for establishment of additional Benches of the Authority based on workload.”</p>
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Bill No. 99 of 2007

THE AUTHORITY FOR ADVANCE RULINGS ON CENTRAL
TAXES BILL, 2007

A

BILL

to provide for the constitution of an Authority for Advance Rulings on Central Taxes as a substitute of the Authority for Advance Rulings constituted under section 245-O of the Income-tax Act, 1961 and the Authority for Advance Rulings (Central Excise, Customs and Service Tax) constituted under section 28F of the Customs Act, 1962, and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-eighth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Authority for Advance Rulings on Central Taxes Act, 2007.

Short title,
extent and
commencement.

(2) It extends to the whole of India.

(3) This section shall come into force at once and the remaining provisions of this Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "appointed day" means the date with effect from which the Authority is constituted under section 3;

(b) "Authority" means the Authority constituted under section 3;

(c) "Central taxes" means taxes or duties levied or collected under the Central Excise Act, 1944, the Income-tax Act, 1961, the Customs Act, 1962, the Customs Tariff Act, 1975, Chapter V of the Finance Act, 1994, and taxes or duties chargeable under any other law for the time being in force in the same manner as taxes or duties under any of the said Acts, as the case may be;

(d) "Chairperson" means the Chairperson of the Authority;

(e) "Member" means a Member of the Authority and includes the Chairperson;

(f) "prescribed" means prescribed by rules.

CHAPTER II

AUTHORITY FOR ADVANCE RULINGS ON CENTRAL TAXES

Constitution of Authority.

3. The Central Government shall, by notification in the Official Gazette, constitute an Authority for giving advance rulings on Central taxes, to be called as the Authority for Advance Rulings on Central Taxes.

Composition of Authority.

4. **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 Revenue Service, who is, or has been, or is qualified to be, a Member of the Central Board of Direct Taxes;**

(c) **an officer of the Indian Revenue Service (Customs and Central Excise), who is, or has been, or is qualified to be, a Member of the Central Board of Excise and Customs;**

(d) **an officer of the Indian Legal Service, who is, or has been, or is qualified to be, an Additional Secretary to the Government of India:**

Provided that for giving advance rulings—

(i) **under the Income-tax Act, 1961, the Authority shall exclude the Member under clause (c); and**

(ii) **under the Acts other than the Income-tax Act, 1961, the Authority shall exclude the Member under clause (b).**

Term of office of Members.

5. The Chairperson or other Member shall hold office as such for a term of five years from the date on which he enters upon his office or until he attains,—

(a) in the case of the Chairperson, the age of seventy years; and

(b) in the case of any other Member, the age of sixty-five years,

whichever is earlier.

Salary, allowances, pension and other conditions of service of Members.

6. The salary, allowances and pension payable to, and other conditions of service of, the Members shall be such, as may be prescribed by the Central Government.

Vacancies, etc., not to invalidate proceedings.

7. No proceeding before, or pronouncement of advance ruling by, the Authority shall be questioned or be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Authority.

<p>1 of 1944. 43 of 1961. 52 of 1962. 32 of 1994.</p>	<p>8. (1) The Authority shall exercise such powers and discharge such functions, as have been conferred on it under the Central Excise Act, 1944, the Income-tax Act, 1961, the Customs Act, 1962, the Finance Act, 1994, this Act, or any other Act.</p>	<p>Powers and functions of Authority.</p>
<p>5 of 1908.</p>	<p>(2) The Authority shall, for the purposes of exercising its powers regarding discovery and inspection, summoning and enforcing the attendance of any person and examining him on oath, issuing commissions for the examination of witnesses or documents, compelling production of books of accounts, other records and documents, have all the powers of a civil court under the Code of Civil Procedure, 1908.</p>	
<p>45 of 1860. 2 of 1974.</p>	<p>9. 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, and the Authority shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.</p>	<p>Proceedings before Authority to be judicial proceedings.</p>
	<p>10. The Authority shall have power to regulate its own procedure in all matters arising out of the exercise of its powers.</p>	<p>Procedure of Authority.</p>
	<p>11. The Central Government shall, in consultation with the Authority, provide the Authority with such officers and staff, as may be necessary, for the exercise of the powers and discharge of the functions of the Authority.</p>	<p>Staff of Authority.</p>
	<p>12. The office of the Authority shall be located in Delhi.</p>	<p>Location of Authority.</p>
<p>CHAPTER III</p> <p>MISCELLANEOUS</p>		
<p>43 of 1961. 52 of 1962.</p>	<p>13. (1) On and from the appointed day, the Authority for Advance Rulings constituted under section 245-O of the Income-tax Act, 1961 and the Authority for Advance Rulings (Central Excise, Customs and Service Tax) constituted under section 28F of the Customs Act, 1962 shall stand abolished.</p>	<p>Abolition of existing Authorities.</p>
	<p>(2) The Chairperson and other Members of the Authorities under sub-section (1) shall be deemed to be the Chairperson and other Members of the Authority constituted under section 3 for the remainder of their respective tenures in the Authorities abolished.</p>	
	<p>(3) The officers and other employees of the Authorities under sub-section (1), appointed to the sanctioned posts, shall be deemed to be the officers and other employees of the Authority constituted under section 3.</p>	
<p>43 of 1961. 74 of 1956. 52 of 1962.</p>	<p>14. Every application or other proceeding pending before the Authority for Advance Rulings constituted under section 245-O of the Income-tax Act, 1961, functioning as such and as the Central Sales Tax Appellate Authority under sub-section (1) of section 24 of the Central Sales Tax Act, 1956, and the Authority for Advance Rulings (Central Excise, Customs and Service Tax) constituted under section 28F of the Customs Act, 1962, shall stand transferred to the Authority on the appointed day.</p>	<p>Transfer of pending cases.</p>
	<p>15. No suit, prosecution or other legal proceedings shall lie against the Authority, or against the Chairperson or other Member, or any other person authorised by any of them for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.</p>	<p>Protection of action taken in good faith.</p>
	<p>16. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.</p>	<p>Power to make rules.</p>
	<p>(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for salary, allowances and pension payable to, and other conditions of service of, the Members under section 6.</p>	
	<p>(3) Every rule made under this Act 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,</p>	

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 that rule.

Power to
remove
difficulties.

17. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the appointed day.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

CHAPTER IV

AMENDMENT OF CERTAIN ENACTMENTS

Amendment
of Central
Excise Act,
1944.

18. In the Central Excise Act, 1944,—

1 of 1944.

(a) in section 23A, for clause (e), the following clause shall be substituted, namely:—

'(e) "Authority" means the Authority constituted under section 3 of the Authority for Advance Rulings on Central Taxes Act, 2007;'

(b) sections 23B, 23G and 23H shall be omitted.

Amendment
of Central
Sales Tax Act,
1956.

19. In the Central Sales Tax Act, 1956,—

74 of 1956.

(a) in section 19, for sub-section (2A), the following sub-section shall be substituted, namely:—

"(2A) Notwithstanding anything contained in sub-section (2), the Chairperson or a Member holding a post as such in the Authority for Advance Rulings on Central Taxes appointed under clause (a) or clause (d), as the case may be, of section 4 of the Authority for Advance Rulings on Central Taxes Act, 2007 may, in addition to his being the Chairperson or a Member of that Authority, be appointed as the Chairman or a Member, as the case may be, of the Authority under this Act.";

(b) in section 24,—

(i) in sub-section (1), for the words, figures and letter "the Authority for Advance Rulings constituted under section 245-O of the Income-tax Act, 1961", the words and figures "the Authority for Advance Rulings on Central Taxes constituted under section 3 of the Authority for Advance Rulings on Central Taxes Act, 2007" shall be substituted;

43 of 1961.

(ii) in sub-section (2), for the words "the Authority for Advance Rulings", the words "the Authority for Advance Rulings on Central Taxes" shall be substituted.

Amendment
of Income-
tax Act,
1961.

20. In the Income-tax Act, 1961,—

43 of 1961.

(a) in section 153, in sub-section (3), in *Explanation I*, for the words "Authority for Advance Rulings", at both the places where they occur, the words "Authority for Advance Rulings on Central Taxes" shall be substituted;

(b) in section 153B, in sub-section (1), in *Explanation*, for the words "Authority for Advance Rulings", at both the places where they occur, the words "Authority for Advance Rulings on Central Taxes" shall be substituted;

(c) in section 245N,—

(i) for clause (d), the following clause shall be substituted, namely:—

'(d) "Authority" means the Authority constituted under section 3 of the Authority for Advance Rulings on Central Taxes Act, 2007;';

(ii) clauses (e) and (f) shall be omitted;

(d) sections 245-O, 245P, 245U and 245V shall be omitted.

52 of 1962.

21. In the Customs Act, 1962,—

Amendment of
Customs Act,
1962.

(a) in section 28E,—

(i) for clause (e), the following clause shall be substituted, namely:—

'(e) "Authority" means the Authority constituted under section 3 of the Authority for Advance Rulings on Central Taxes Act, 2007;';

(ii) clauses (f) and (g) shall be omitted;

(b) sections 28F, 28G, 28L and 28M shall be omitted.

32 of 1994.

22. In the Finance Act, 1994, in Chapter VA,—

Amendment of
Chapter VA of
Finance Act,
1994.

(a) in section 96A, for clause (d), the following clause shall be substituted, namely:—

'(d) " Authority" means the Authority constituted under section 3 of the Authority for Advance Rulings on Central Taxes Act, 2007;';

(b) sections 96B, 96G and 96H shall be omitted.

STATEMENT OF OBJECTS AND REASONS

At present, there are two Authorities for Advance Rulings, one constituted under section 245-O of the Income-tax Act, 1961, which has under section 24 of the Central Sales Tax Act, 1956, also been notified as the Central Sales Tax Appellate Authority, and the other constituted under section 28F of the Customs Act, 1962, which is also an Authority for Advance Rulings under the Central Excise Act, 1944 and the Finance Act, 1994 for purposes of Service Tax. These Authorities, called as "Authority for Advance Rulings (Income-tax)" and "Authority for Advance Rulings (Central Excise, Customs and Service Tax)", have been established to enable applicants to obtain, in advance, binding rulings from the said Authorities on issues which may arise in the determination of their tax liabilities.

2. While reviewing the performance of the said Authorities on Advance Rulings, it was noticed that these Authorities did not have adequate work to justify separate Authorities with separate establishments. A decision was, therefore, taken to constitute a common Authority for Advance Rulings for performing the functions of these Authorities. For this purpose, it is necessary to enact a separate legislation. Hence, the Authority for Advance Rulings on Central Taxes Bill, 2007, for constituting an Authority for Advance Rulings on Central Taxes. Consequential amendments to the relevant provisions of the Income-tax Act, 1961, the Customs Act, 1962, the Central Excise Act, 1944, the Central Sales Tax Act, 1956 and the Finance Act, 1994 are also sought to be done through the Bill.

3. The Bill seeks to achieve the above objects.

NEW DELHI;

The 30th November, 2007.

P. CHIDAMBARAM.

PRESIDENT'S RECOMENDATION UNDER ARTICLE 117 OF THE CONSTITUTION OF INDIA

[Copy of letter No. 29/5/2005-Ad.IC, dated the 3rd December, 2007 from Shri P. Chidambaram, Minister of Finance to the Secretary-General, Lok Sabha.]

The President, having been informed of the subject matter of the proposed Authority for Advance Rulings on Central Taxes Bill, 2007, recommends under clause (1) of article 117 of the Constitution of India, the introduction of the above Bill in Lok Sabha.

FINANCIAL MEMORANDUM

The Authority for Advance Rulings on Central Taxes Bill, 2007, seeks to provide for the constitution of the Authority for Advance Rulings on Central Taxes consisting of a Chairperson and three Members. As the Authority will be in lieu of the existing Authority for Advance Rulings (Income-Tax) and Authority for Advance Rulings (Central Excise, Customs and Service Tax), each consisting of a Chairperson and two Members, there will be no extra expenditure in constituting the Authority for Advance Rulings on Central Taxes and its supporting staff.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 16 of the Authority for Advance Rulings on Central Taxes Bill, 2007, seeks to empower the Central Government to make, by notification in the Official Gazette, rules for carrying out the provisions of the said Bill. Sub-clause (2) of the said clause specifies that such rules may be made for salary, allowances and pension payable to and other conditions of service of the Members, which includes the Chairperson.

2. The rules made by the Central Government shall be laid, as soon as may be after they are made, before each House of Parliament.

3. The matters in respect of which the rules may be made are generally matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE CENTRAL EXCISE ACT, 1944

(1 OF 1944)

* * * * *

CHAPTER III—A

ADVANCE RULINGS

23A. In this Chapter, unless the context otherwise requires,—

Definitions.

* * * * *

52 of 1962.

(e) "Authority" means the Authority for Advance Rulings (Central Excise, Customs and Service tax) constituted under section 28F of the Customs Act, 1962.

* * * * *

23B. 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.

Vacancies, etc., not to invalidate proceedings.

* * * * *

5 of 1908.

23G. (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.

Powers of Authority.

2 of 1974.

(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 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.

23H. 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.

Procedure of Authority.

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EXTRACTS FROM THE CENTRAL SALES TAX ACT, 1956

(74 OF 1956)

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CHAPTER VI

AUTHORITY TO SETTLE DISPUTES IN COURSE OF INTER-STATE TRADE OR COMMERCE

19. (1) * * * * *

Central Sales Tax Appellate Authority.

43 of 1961.

(2A) Notwithstanding anything contained in sub-section (2), the Chairman or a Member holding a post as such in the Authority for Advance Rulings appointed under clause (a) or clause (c), as the case may be, of sub-section (2) of section 245-O of the Income-Tax Act, 1961 may, in addition to his being the Chairman or a Member of that Authority, be appointed as the Chairman, or a Member, as the case may be, of the Authority under this Act.

* * * * *

43 of 1961.

24. (1) Notwithstanding anything contained in any other law for the time being in force and in section 19 of this Act, the Authority for Advance Rulings constituted under section 245-O of the Income-tax Act, 1961 shall be notified by the Central Government in the official Gazette, with such modifications as may be necessary, to make its composition in

Authority for Advance Rulings to function as Authority under this Act.

conformity with section 19 of this Act, as the Authority under this Act till such time an Authority is constituted under that section.

(2) On and from the date of the constitution of the Authority in accordance with the provisions of section 19 of this Act, the proceedings pending with the Authority for Advance Rulings shall stand transferred to the Authority constituted under that section from the stage at which such proceedings stood before the date of constitution of the said Authority.

* * * * *

EXTRACTS FROM THE INCOME-TAX ACT, 1961

(43 OF 1961)

Time limit
for comple-
tion of assess-
ments and re-
assessments.

153. (1)* * * * * *

(3) The provisions of sub-sections (1), (1A), (1B) and (2) shall not apply to the following classes of assessments, reassessments and recomputations which may, subject to the provisions of sub-section (2A), be completed at any time—

* * * * *

(ii) where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 250, 254, 260, 262, 263, or 264 or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act;

(iii) where, in the case of a firm, an assessment is made on a partner of the firm in consequence of an assessment made on the firm under section 147.

Explanation 1.—In computing the period of limitation for the purposes of this section—

(i) the time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee to be re-heard under the proviso to section 129, or

(ii) the period during which the assessment proceeding is stayed by an order or injunction of any court, or

(iia) the period commencing from the date on which the Assessing Officer intimates the Central Government or the prescribed authority, the contravention of the provisions of clause (21) or clause (22B) or clause (23A) or clause (23B) or sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) section 10, under clause (i) of the proviso to sub-section (3) of section 143 and ending with the date on which the copy of the order withdrawing the approval or rescinding the notification, as the case may be, under those clauses is received by the Assessing Officer.

(iii) the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (2A) of section 142 and ending with the last date on which the assessee is required to furnish a report of such audit under that sub-section, or

* * * * *

(iva) the period (not exceeding sixty days) commencing from the date on which the Assessing Officer received the declaration under sub-section (1) of section 158A and ending with the date on which the order under sub-section (3) of that section is made by him, or

(v) in a case where an application made before the Income-tax settlement Commission under section 245C is rejected by it or is not allowed to be proceeded with

by it, the period commencing from the date on which such application is made and ending with the date on which the order under sub-section (1) of section 245D is received by the Commissioner under sub-section (2) of that section, or

(vi) the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section (1) of section 245Q and ending with the date on which the order rejecting the application is received by the Commissioner under sub-section (3) of section 245R, or

(vii) the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section (1) of section 245Q and ending with the date on which the advance ruling pronounced by it is received by the Commissioner under sub-section (7) of section 245R,

shall be excluded:

Provided that where immediately after the exclusion of the aforesaid time or period, the period of limitation referred to in sub-sections (1), (1A), (1B), (2) and (2A) available to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly.

Explanation 2.—Where, by an order referred to in clause (ii) of sub-section (3) any income is excluded from the total income of the assessee for an assessment year, then, an assessment of such income for another assessment year shall, for the purposes of section 150 and this section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order.

Explanation 3.—Where, by an order referred to in clause (ii) of sub-section (3), any income is excluded from the total income of one person and held to be the income of another person, then, an assessment of such income on such other person shall, for the purposes of section 150 and this section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order, provided such other person was given an opportunity of being heard before the said order was passed.

* * * * *

153B. (1) Notwithstanding anything contained in section 153, the Assessing Officer shall make an order of assessment or reassessment.—

Time limit for completion of assessment under section 153A.

(a) in respect of each assessment year falling within six assessment years referred to in clause (b) of section 153A, within a period of two years from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed;

(b) in respect of the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A, within a period of two years from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed:

Provided that in case of other person referred to in section 153C, the period of limitation for making the assessment or reassessment shall be the period as referred to in clause (a) or clause (b) of this sub-section or one year from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later.

Provided further that in the case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed during the financial year commencing on the 1st day of April, 2004 or any subsequent financial year,—

(i) the provisions of clause (a) or clause (b) of this sub-section shall have effect as if for the words "two years" the words "twenty-one months" had been substituted;

(ii) the period of limitation for making the assessment or reassessment in case of other person referred to in section 153C, shall be the period of twenty-one months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed or nine months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later.

Explanation.—In computing the period of limitation for the purposes of this section,—

(i) the period during which the assessment proceeding is stayed by an order or injunction of any court; or

(ii) the period commencing from the day on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (2A) of section 142 and ending on the day on which the assessee is required to furnish a report of such audit under that sub-section; or

(iii) the time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee of being re-heard under the proviso to section 129; or

(iv) in a case where an application made before the Settlement Commission under section 245 is rejected by it or is not allowed to be proceeded with by it, the period commencing from the date on which such application is made and ending with the date on which the order under sub-section (1) of section 245D is received by the commissioner under sub-section (2) of that section, or

(v) the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section (1) of section 245Q and ending with the date on which the order rejecting the application is received by the Commissioner under sub-section (3) of section 245R, or

(vi) the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section (1) of section 245Q and ending with the date on which the advance ruling pronounced by it is received by the Commissioner under sub-section (7) of section 245R,

shall be excluded:

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in clause (a) or clause (b) of this section available to the Assessing Officer for making an order of assessment or reassessment, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly.

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CHAPTER XIX—B

ADVANCE RULINGS

Definitions.

245N. In this Chapter, unless the context otherwise requires,—

* * * * *

(d) "Authority" means the Authority for Advance Rulings constituted under section 245-O;

(e) "Chairman" means the Chairman of the Authority;

(f) "Member" means a Member of the Authority and includes the Chairman.

Authority for Advance Rulings.

245-O. (1) The Central Government shall constitute an Authority for giving advance rulings, to be known as "authority for Advance Rulings".

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

(a) a Chairman, who is a retired Judge of the supreme Court;

(b) an Officer of the Indian Revenue Service who is qualified to be a member of the Central Board of Direct Taxes;

(c) an Officer of the Indian Legal Service who is, or is qualified to be, an Additional Secretary to the Government of India.

(3) The salaries and allowances payable to, and the terms and conditions of service of, the Members shall be such as may be prescribed.

(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.

245P. No proceeding before, or pronouncement of advance ruling by, the Authority 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.

Vacancies, etc., not to invalidate proceedings.

* * * * *

5 of 1908.

245U. (1) The Authority shall, for the purpose of exercising its powers, have all the powers of a civil court under the Code of Civil Procedure, 1908 as are referred to in section 131 of this Act.

Powers of the Authority.

2 of 1974.

(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 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.

245V. 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.

Procedure of Authority.

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EXTRACTS FROM THE CUSTOMS ACT, 1962

(52 OF 1962)

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CHAPTER VB

ADVANCE RULINGS

28E. In this Chapter, unless the context otherwise requires,—

Definitions.

* * * * *

(e) "Authority" means the Authority for Advance Rulings (Central Excise, Customs and Service Tax) constituted under section 28F;

(f) "Chairperson" means the Chairperson of the Authority;

(g) "Member" means a Member of the Authority and includes the Chairperson; and

* * * * *

28F. (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 & Service Tax.

Authority for advance rulings.

(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.

(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.

Vacancies,
etc., not to
invalidate
proceedings.

28G. 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.

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Powers of
Authority.

28L. (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, 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.

2 of 1974.

45 of 1860.

Procedure of
Authority.

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.

EXTRACTS FROM THE FINANCE ACT, 1994

(32 OF 1994)

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CHAPTER VA

ADVANCE RULINGS

Definitions.

96A. In this Chapter, unless the context otherwise requires,—

* * * * *

(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.

* * * * *

Vacancies, *etc.*,
not to
invalidate
proceedings.

96B. 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.

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Powers of
Authority.

96G. (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 of 1974. (2) The Authority shall be deemed to be a civil court for the purposes of section 195,
45 of 1860. 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.

96H. 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. Procedure of authority.

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LOK SABHA

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to provide for the constitution of an Authority for Advance Rulings on Central Taxes as a substitute of the Authority for Advance Rulings constituted under section 245-O of the Income-tax Act, 1961 and the Authority for Advance Rulings (Central Excise, Customs and Service Tax) constituted under section 28F of the Customs Act, 1962, and for matters connected therewith or incidental thereto.

(Shri P. Chidambaram, Minister of Finance)