

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.
(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri. Rajiv Magoo, Additional Commissioner of Central Tax, (Member)

(2) Shri. T. R. Ramnani, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id	Pundalik Borade
Legal Name of Applicant	Mr.Tukaram Pundalik Borade
Registered Address/Address provided while obtaining user id	Silver Oak House, Vinchur Gavli, Madsangvi, Nasik - 422001
Details of application	GST-ARA, Application No. 94 Dated 17.01.2020
Concerned officer	Nasik Division –I, Commissionerate, Nasik
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A Category	Leasing Business
B Description (in brief)	Mr Borade co-owns immovable property situated at Nashik, which is given on rent to Public Welfare Department (PWD), Maharashtra Government.
Issue/s on which advance ruling required	# Applicability of a notification issued under the provisions of the Act # Whether applicant is required to be registered under the Act.
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

NO.GST-ARA- 94/2019-20/B- 84

Mumbai, dt. 02.11.2021

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as “the CGST Act and MGST Act” respectively] by **Mr.Tukaram Pundalik Borade**, the applicant, seeking an advance ruling in respect of the following reframed questions:

1. In the instant case, whether the services provided by us to Samaj Kalyan Department, State Government of Maharashtra (Social Welfare Department) for residential accommodation of underprivileged girls is exempt from GST?
2. Whether TDS provisions will be applicable in case where the supply of services is exempt? We also would like to draw attention to the fact that 97 (b) of CGST Act, 2017 covers the question on

which advance ruling can be sought i.e. “(b) applicability of a notification issued under the provisions of this Act”. Further, the issue has been addressed in Dolphin Techno Waste Management Pvt. Ltd. [2020 (35) G.S.T.L. 413 (A.A.R. - GST - W.B.)], Mahalakshmi Mahila Sangha [2020 (37) G.S.T.L. 385 (A.A.R. - GST - Kar.)] etc.

3. As the Applicant is not registered under GST and provide services to Social Welfare Department (Samaj Kalyan Department), a Department of State Government, then whether TDS notification issued under section 51 would be applicable for deduction of TDS?
4. In case TDS is deducted, whether we would be entitled for refund of the same?

The questions raised earlier were as under:-

1. In the instant case, whether the services provided by us to Social Welfare Department (Samaj Kalyan Department) will be liable for TDS under section 51 of CGST Act, 2017?
2. As the Applicant is not registered under GST and provide services to Social Welfare Department (Samaj Kalyan Department), a Department of State Government, then whether TDS notification issued under section 51 would be applicable for deduction of TDS?
3. Whether the small business exemption would be applicable to us based on agreement value or on basis of share each co-owner?
4. In case TDS is deducted, whether we would be entitled for refund of the same?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression ‘GST Act’ would mean CGST Act and MGST Act.

2. **FACTS AND CONTENTION – AS PER THE APPLICANT**

The submissions, made by Shri Borade Tukaram Pundalik, the Applicant are as under:-

- 2.1 The applicant co-owns immovable property situated at Nashik, which is given on rent to Sahayak Ayukt Samaj Kalyan Vibhag, Public Welfare Department (PWD), Maharashtra Government. All the co-owners, including the Applicant, hold proportionate share in the property in three separate agreements. The rental income and co-owner details as are under:

Sr.	Particulars	Agreement 1	Agreement 2	Agreement 3
1	Property name and address	Plot nos. 4, 5 & 6. S no. 279/1/10/2/2 Durga Nagar, Panchwati Nashik.	Plot no. 3, 4 & 5. S no. 279/1/10/2/2 Durga Nagar, Panchwati Nashik.	Plot no. 2 & 3 . S no. 279/1/10/2/2 Durga Nagar, Panchwati Nashik.

2	Number of owners	1	2	2
3	Name of co-owners	1. Shri Tukaram Pundalik Borade	1. Sheetal Borade 2. Gayatri Borade	1. Meerabai Borade 2. Sagar Borade
4	Co-owner share (sq. ft)	N/A	50:50	50:50
5	Average rent p.m.	1,52,134.00	2,40,711.00	2,59,454.00
6	Total rent p.a.	18.26 lacs	28.89 lacs	31.13 lacs
7	Rental income per person per annum	18.26 lacs	14.42 lacs	15.57 lacs

2.2 In the instant case since the rental income from the properties, per annum, does not exceed the GST registration threshold (i.e. Rs 20 lacs), the Applicant is not registered under GST Act, 2017. However, Sahayak Ayukt Samaj Kalyan Vibhag is deducting TDS under Section 51 of the CGST Act, 2017 which is resulting into cost for the Applicant.

B. Statement containing the Applicant's interpretation of law and /or facts

2.3 The subject case is covered under section 51 of the CGST Act, 2017 i.e. Tax Deducted at Source (TDS) by the Government. As per Section 51(1) of the CGST Act, the expression TDS has been defined to include all services provided to Government under CGST Act, and the gross value to deduct TDS should be more than 2,50,000/- in order to be eligible for deduction of TDS.

2.4 As per provisions of section 51 of CGST Act, 2017 read with Section 20 of IGST Act, 2017, a deductor is required to deduct TDS at prescribed rates as CGST and SGST/UTGST (in case of intra-state) on the payment made or credited to supplier w.r.t. procurement of 'taxable goods or services'.

2.5 In terms of provisions of section 22 of CGST Act read with notification issued under IGST Act, the person, who is making intra / inter-state taxable supply and having an aggregate turnover upto prescribed limit computed on PAN India basis, has been exempted from obtaining registration. At present, the threshold for services in Maharashtra is INR 20 lakhs. In view of the threshold, it can be said that TDS provisions are not applicable in the instant case.

2.6 Further as per the provision of subsection (5) of section 51, a deductee can claim credit of TDS deducted in his credit ledger. It is also evident from this provision that the registered person can claim credit. Hence, this provision is applicable only in case of registered supplier.

2.7 Even further, as per GSTR FORM -07 (TDS return), GSTIN of deductee is required to be provided since tax deducted would reflect into the electronic cash ledger of said deductee onto GSTN Portal. Hence, it can be said that in case of unregistered supplier, the said mechanism is not intended to be applicable.

- 2.8 Even the Law Committee of GST Council clarified in the "Standard Operating Procedure" (SOP) issued on 28.09.2018 that, *tax deduction is not required to be made under GST Tax where the payment is made to an unregistered dealer.*

Given the aforesaid, TDS may not be deductible in the instant case.

Gross Turnover of applicant does not exceed threshold and thus, is exempt from registration u/s 22(1) of the GST Act, 2017

- 2.9 Applicant further submits that each co-owner receives rent, proportionate to the share in the immovable property and the income tax authority assesses him separately on the income so received. Merely because several persons jointly own an immovable property they cannot, be treated as 'an association of persons or a body of individuals'. The co-owners, including the Applicant, have not been considered 'an association of persons or a body of individuals' for the purpose of income Tax. These co-owners have not formed any association to provide taxable service.

- 2.10 The Kerala AAR has answered a question similar to the one the Applicant has raised [Elambrancheri Khaldoon, 2018 (18) GSTL 152 (AAR - GST)] = 2018-TIOL-187-AAR-GST. It ruled that the threshold exemptions will be applicable on individual earnings of the co-owners who are participants in a jointly held property.

- 2.11 Further, the decision in the case of **M/s. SRI RABI SANKAR TAH [2019-TIOL-418-AAR-GST] Case No. 34 of 2019** wherein; it was held that *"The Applicant and the other two co-owners cannot be treated as an association of persons and, therefore, as a person defined under section 2(84) of the GST Act, where their income from renting is separately ascertainable and assessed for income tax individually at the hand of each co-owner. Whether the Applicant is required to be registered under section 22(1) of the GST Act will, therefore, depend on his gross turnover, ascertained separately from the other co-owners, exceeding the threshold as provided under the Act."*

- 2.12 Given the aforesaid, applicant submits that TDS is not liable to be deducted in the instant case.

ADDITIONAL SUBMISSION DATED 08.10.2021:-

- 2.13 Entry No. 3 of Notification No. 12/2017- C.T. (R) dt 28.06.2017 exempts 'Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority by way of any activity in relation to any function entrusted to a

Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution’.

2.14 In this regard, applicant submits that the services provided are renting of immovable property services and thus, it’s a pure service (as no specific goods are supplied). Further, the services are given to Samaj Kalyan Vibhag (Social Welfare Department) of State Government of Maharashtra.

2.15 Additionally, Article 243G of Constitution of India is reproduced as under:

“243G. Powers, authority and responsibilities of Panchayats.

Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to:

(a) the preparation of plans for economic development and social justice;

(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.”

2.16 In this regard, the **Eleventh Schedule** of the Indian Constitution covers following, which could be relevant for discussion under consideration:

“ELEVENTH SCHEDULE (Article 243G)

25. Women and Child development

26. Social welfare, including welfare of handicapped and mentally retarded.

27. Welfare of weaker sections, and of scheduled castes and the scheduled tribes”.

2.17 Further, Article 243W of the Indian Constitution of India provides as below:

“243W. Powers, authority and responsibilities of Municipalities, etc.—*Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow—*

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to—

(i) the preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.”

2.18 Also, the Twelfth Schedule of Constitution of India provides as under:

"TWELFTH SCHEDULE (Article 243W)

"3. Planning for economic and social development

9. *Safeguarding the interest of weaker sections of society, including handicapped and mentally retarded".*

2.19 In the instant case the State Government is taking the property on rent for welfare of under-privileged section of the society and in particular, girls. Thus, as the services are provided to 'Samaj Kalyan Vibhag' for "Magasvargiya Mulinche Shashkiya Vastigruha" the services will be covered under the functions entrusted under Article 243W and/or 243G.

2.20 Given the aforesaid, as the services are covered under the Sr. No. 3 of Not. No. 12/2017-CT dated 28.06.2017 (as amended from time to time), the said services are exempt from GST.

2.21 It may be noted that the Section 51 of CGST Act, 2017 is applicable in case of
"... payment made or credited to the supplier (hereafter in this section referred to as "the deductee") of taxable goods or services or both, where the total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees"

2.22 In view of the aforesaid, unless the supply is "taxable", the provisions of Section 51 of CGST Act will not be applicable. Additionally, applicant is not registered for GST purposes (as he has exempt income). Hence, TDS is not liable to be deducted in the instant case.

03. CONTENTION – AS PER THE CONCERNED OFFICER:

The jurisdictional/concerned officer has made submissions citing certain provisions of the CGST Act, 2017 and has arrived at the conclusion as under:-

- a. In the instant case supply of service by applicant is exempted under CGST Act 2017 and applicant is not registered under CGST ACT 2017 / MGST Act 2017.
- b. Tax deduction is not required in the instant case. Supply of service by applicant is exempted under CGST Act 2017 and not to be treated as liable for deduction under section 51 of CGST Act, 2017.
- c. Since supply of service by applicant is exempted under CGST Act 2017 and not to be treated as liable for deduction under section 51 of CGST Act, 2017, the TDS Notification issued under section 51 would not be applicable for deduction of TDS.
- d. Further, as per information submitted by applicant, supply of service by applicant is exempted under CGST Act 2017 and hence to that extent question of small business exemption dose not arise in instant case.

- e. Since supply of service by applicant is exempted under CGST Act 2017 and not to be treated as liable for deduction under section 51 of CGST Act, 2017, consequentially, Applicant is not entitled for refund of the same.

04. HEARING

- 4.1 Preliminary e-hearing in the matter was held on 03.12.2020. Shri. Pritam Mahure, CA and Shri. Sahil Tharani, CA appeared, and requested for admission of the application. Applicant was asked to reframe the questions. Jurisdictional Officer was absent.
- 4.2 The application was admitted and called for final e-hearing on 07.09.2021. Shri. Pritam Mahure, CA and Authorized Representative, made oral and written submissions. Jurisdictional Officer appeared and requested for time to make submissions.
- 4.3 We heard both the sides.

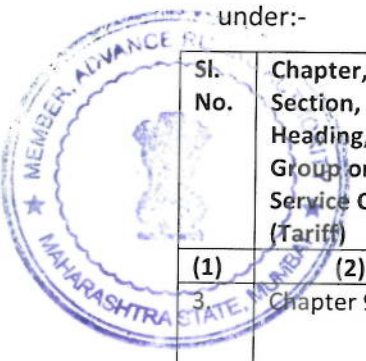
05. DISCUSSIONS AND FINDINGS:

- 5.1 We have perused the documents on record, gone through the facts of the case and the submissions both oral and written, made by the applicant. The applicant redrafted the questions raised by him vide e-mail dated 27.09.2021.
- 5.2 The applicant is a co-owner of immovable property situated in Nashik. The details of the plot are mentioned in the subject application. During the course of the hearing the applicant submitted that a building has been constructed on the plots owned by the applicant along with other co-owners and the said building is given on lease to the 'Samaj Kalyan Vibhag' (Department of Social Welfare) of the State Government of Maharashtra for "Magasvargiya Mulinche Shashkiya Vastigruha" (Government Hostel for Girls from the Backward class). Thus, the applicant has submitted that the building constructed on the plots is used as a government residential accommodation for housing girls from the backward class, by the Government of Maharashtra.
- 5.3.1 The first revised question asked is, whether the services provided by the applicant to Samaj Kalyan Department, State Government of Maharashtra (Social Welfare Department) for residential accommodation of underprivileged girls is exempt from GST.
- 5.3.2 We observe that, the first question pertains to liability of GST on the applicant, i.e. whether the impugned service is taxable or exempt under the GST Laws.
- 5.3.3 The applicant has submitted that the total amount received by him per annum is Rs. 18.26 lakhs, which is below the threshold amount above which liability to pay GST accrues. It is seen from

the submissions that there is an overlapping of Plot Numbers in respect of the co-owners for example applicant has mentioned that Plot nos. 4, 5 & 6 belongs to him. However it is also seen that Plot No 4 & 5 belongs to other co-owners. However, the applicant has not made any detailed submissions stating the actual percentage of the owner/co-owners in the said property. We therefore do not address the said submissions made by the applicant in support of being below threshold GST turnover limit and therefore non-taxable, due to non-submission of details

5.3.4 The applicant, vide additional submissions dated 08.10.2021, has also submitted that the impugned supply undertaken, is exempt under the provisions of Notification No. 12/2017- C.T. (R) dt 28.06.2017 because he is rendering pure services to Samaj Kalyan Vibhag (Social Welfare Department) of State Government of Maharashtra in relation to a function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

5.3.5 The relevant provisions of Notification No. 12/2017- C.T. (R) dt 28.06.2017 are reproduced as under:-



Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
3	Chapter 99	Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.	Nil	Nil

5.3.6 To answer the query of the applicant regarding the admissibility of entry no. (3) of Notification No. 12/2017-CTR in the subject case, we need to find:-

- whether the subject supply is a supply of Pure Services;
- provided to the Central Government, State Government or Union territory or local authority or a Governmental authority;

c. by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

5.3.7 Schedule II of the CGST Act, 2017 sets out the activities which are to be treated as supply of goods or supply of service wherein "renting of immovable property" is treated as supply of service.

5.3.8 Thus, we find that in the instant case, the supply of leasing of immovable properties by the applicant is a supply of services. The applicant has submitted that there is no supply of goods whatsoever, along with the supply of leasing services in the subject case and therefore we conclude that the subject activity is a supply of pure services (condition 'a' mentioned in para 5.3.6 is satisfied).

5.3.9 Further, we observe that the said pure services are supplied to a department of the State Government and therefore we are of the opinion that the said pure services are rendered to the State Government. Thus condition 'b' mentioned in para 5.3.6 is also satisfied.

5.3.10 Further, the third condition of Entry No. (3) Of Notification No. 12/2017-CT(R) dated 28.06.2017 is that pure services should be provided to a Government Entity, etc., by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

5.3.11 Article 243W of the Indian Constitution states as under:

"Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow:-

- (a) *The Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as maybe specified herein, with respect to-*
 - i. *The preparation of plans for economic development and social justice;*
 - ii. *The performance of functions and the implementation of schemes as may be entrusted to them including those in relation to matters listed in the twelfth Schedule.*
- (b) *The Committees with such powers and authority as may be necessary to enable them to carry out the responsibility conferred upon them including those in relation to the matters listed in the Twelfth Schedule."*

Twelfth Schedule of the Indian Constitution provides for the following functions (relevant) as under:

(1)

(3) *Planning for economic and social development*

(9)Safeguarding the interest of weaker sections of society, including handicapped and mentally retarded

5.3.12 Further, Article 243G of the Indian Constitution states as under:

"Article 243G. Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority and may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to –

- (a) *The preparation of plans for economic development and social justice;*
- (b) *The implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule."*

Article 243G of the Constitution refers to a list of functions enumerated in the Eleventh schedule. Entries 26 and 27 of the Eleventh schedule which is relevant states the following:

26. *Social welfare, including welfare of handicapped and mentally retarded.*

27. *Welfare of weaker sections, and of scheduled castes and the scheduled tribes.*

5.3.13 The applicant has submitted that the Samaj kalyan Vibhag of the Government of Maharashtra has taken the immovable property on rent from the applicant to house the girls from the backward class communities which can be considered as a welfare measure undertaken by the Government for the under-privileged section of the society. Other than making this statement, the applicant has not submitted any evidence or submissions to state as to how his activities are covered under Article 243G/243W of the Constitution. There are no submissions made to show that the impugned services are supplied by the applicant by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

5.3.14 Given the aforesaid, we find that even though the applicant as per his submission is supplying Pure Services, in light of insufficient material on record, it is not possible for us to find whether the said services are supplied by the applicant by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

5.3.15 Hence, in view of the above, the renting of immovable property services by the applicant is not liable for exemption under the provisions of Entry No. (3) Of Notification No. 12/2017-CT(R) dated 28.06.2017.

5.4.1 The second question raised by the applicant is whether TDS provisions will be applicable in case where the supply of services are exempt.

- 5.4.2 We have already held above that the impugned services supplied by the applicant are liable to tax and therefore not exempt. Thus the TDS provisions under the relevant section 51 of the GST Act are applicable in the subject case.
- 5.5.1 Question No. 3:- "As the Applicant is not registered under GST and provide services to Social Welfare Department (Samaj Kalyan Department), a Department of State Government, then whether TDS notification issued under section 51 would be applicable for deduction of TDS?"
- 5.5.2 As discussed above TDS notification issued under section 51 would be applicable for deduction of TDS in the subject case.
- 5.6.1 The fourth question raised by the applicant in case TDS is deducted, whether applicant would be entitled for refund of the same?
- 5.6.2 The said question pertains to entitlement of refund and is not covered under Section 97 of the CGST Act, 2017 and therefore we refrain from answering this question.
06. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

For reasons as discussed in the body of the order, the questions are answered thus –

Question 1:- In the instant case, whether the services provided by us to Samaj Kalyan Department, State Government of Maharashtra (Social Welfare Department) for residential accommodation of underprivileged girls is exempt from GST?

Answer: Answered in the negative.

Question 2:- Whether TDS provisions will be applicable in case where the supply of services is exempt? We also would like to draw attention to the fact that 97 (b) of CGST Act, 2017 covers the question on which advance ruling can be sought i.e. "*(b) applicability of a notification issued under the provisions of this Act*". Further, the issue has been addressed in Dolphin Techno Waste Management Pvt. Ltd. [2020 (35) G.S.T.L. 413 (A.A.R. - GST - W.B.)], Mahalakshmi Mahila Sangha [2020 (37) G.S.T.L. 385 (A.A.R. - GST - Kar.)] etc.

Answer:- TDS provisions will be applicable in the subject case.

Question 3:- As the Applicant is not registered under GST and provide services to Social Welfare Department (Samaj Kalyan Department), a Department of State Government, then

whether TDS notification issued under section 51 would be applicable for deduction of TDS?

Answer:- Answered in the affirmative.

Question 4:- In case TDS is deducted, whether we would be entitled for refund of the same?

Answer:- Not answered in view of the discussions made above.




RAJIV MAGOO
(MEMBER)


T.R. RAMNANI
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Pr. Chief Commissioner of Central Tax, Churchgate, Mumbai
5. Joint Commissioner of State Tax, Mahavikas for Website.

Note:-An Appeal against this advance ruling order shall be made before, The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.