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THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR  
  
GOODS AND SERVICES TAX  
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n 99 of the Maharashtra Goods and Services Tax Act, 2017)  
ORDER NO. MAH/AAAR/DS-RM/)4-/2023-24 Date- |%.0 6. 202 4  
  
(Constituted under Sectio;  
  
BEFORE THE BENCH OF  
ahi THE BENCH OF  
(1) Dr. D.K. Srinivas, MEMBER (Central Tax)  
  
(2) Shri. Rajeey Kumar Mital, MEMBER (State Tax)  
  
Name and Address of the Appellant: | M/s MEK Peripherals India Private Limited,  
  
108, Diamond Plaza, 1\* Floor, 391, Dr. D.B. Marg,  
|  
  
| Lamington Road, Mumbai — 400 004  
  
| GSTIN Number: 27AAFCMS5236L.1Z6  
  
Clause(s) of Section 97, ( -  
  
under Section 97 (e) & (g).  
which the question(s) raised:  
  
| Date of Personal Hearing: | 09.03.2023  
  
Present for the Appellant: | (i) Rahul Thakar, Advocate  
  
| Appeal No. MAH/GST-AAAR/05/2022-23 dated 27-05- |  
  
| 7 2022 against Advance Ruling No. GST-ARA-59/2020-  
| Details of appeal:  
| 21/B-56 dated 27.04.2022.  
  
' Jurisdictional Officer: | Range-IIl, Division-IV, Mumbai South.  
  
(Proceedings under Section 101 of the Central Goods and Services Tax Act, 2017 and  
the Maharashtra Goods and Services Tax Act, 2017)  
  
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 such dissimilar provisions, a reference to the CGST Act would also mean  
a reference to the same provisions under the MGST Act.  
  
The present appeal has been filed under Section 100 of the Central Goods and Services Tax  
Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as  
“CGST Act” and “MGST Act”] by M/s. MEK Peripherals India Private Limited, situated  
at 108 Diamond Plaza, Ist, Swastik Cinema Compound, 391 D. B. Marg Lamington Road,  
  
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Mumbai. Mumbai, Maharashtra, 400004. (“hereinafter referred to as “ Appellant”) against  
the Advance Ruling No. GST-ARA-59/2020-21/B-56 dated 27.04.2 22, pronounced by the  
Maharashtra Authority for Advance Ruling (hereinafter referred to as “MAAR”).  
  
BRIEF FACTS OF THE CASE  
  
M/s MEK Peripherals (India) Private Limited (the Appellant’) is a reseller of Intel Products.  
The Appellant is having their main place of business in the State of Maharashtra.  
  
The Appellant is registered under the GST law at its place of business in the State of  
Maharashtra under the GSTIN 2727AAFCMS5236L1Z6. Apart from the aforesaid; the  
  
Appellant is not registered in any other State in India.  
  
The Appellant purchases the products from various Distributors who are registered under GST  
Law in their respective states. The distributors import the product from “Intel inside US LLC”  
and sells to Appellant. The Appellant further sells the same product to various retailers.  
  
The Appellant has entered into agreement with “Intel inside US LLC” herein after referred to  
as (UL) under Intel Authorized Components Supplier Program ( IACSP) that Appellant will  
receive a non-binding Plan of Record Target (POR Target). Under the Plan of Record Target  
(POR) the Appellant will have an opportunity to eam certain incentive as percentage of  
  
performance to quarterly goal on eligible Intel products.  
  
The Appellant stated that as per agreement it receives incentives on completion of targets set  
under said agreement in Intel Authorized Components Supplier Program (IACSP).  
  
In view of the above facts, the Appellant had filed the GST Advance Ruling Application before  
  
the MAAR on following questions:  
a) Whether the Incentive received from “intel inside US LLC” under intel Approved  
  
Component Supplier Program (IACSP) can be considered as “Trade Discount”?  
b) if not considered as “Trade Discount” then whether it is consideration for any supply?  
  
ce) ifitis considered as supply than whether it will qualify as export of service?  
  
3.7 The MAAR vide order no. GST-ARA-59 020-21/B-56 dated 27.04.2022. has held that: -  
  
(i) The Appellant purchases the yoods from the distributor and is not receiving discounts  
from the said distributors. Therefore. there is no supply of goods or services or both from HUL.  
  
to the Appellant. no sale transaction of goods in the instant case between the Appellant and  
  
IIUL. hence the “incentives” received by the Appellant from ITUL will not be covered under  
  
the provision of Section 15(3) of CGST Act. 2017. The supply of goods in respect of which  
  
the incentives are purported to be given are rendered by the distributors and not by IIUL. So,  
  
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the incentive received from HUL under Intel approved Component Supplier Program (IACSP)  
cannot be considered as “Trade discount”.  
  
(ii) In the present case, the marketing services are provided in respect of goods which are made  
physically available by the recipient of services (i.e ITUL, through its distributors) to the  
supplier of marketing services (i.e the Appellant), in order to provide the services, Therefore,  
as per section 13 (3) (a) of CGST Act, 2017, the place of provision of services is the location  
of the supplier of services i.e, the Appellant, which is in India. Hence, the impugned supply  
  
does not qualify as export of service.  
  
Therefore, being aggrieved of the Impugned Order passed by MAAR, the present appeal is  
being filed before MAAAR, on basis of following the grounds.  
  
GROUNDS OF APPEAL  
The Appellant, in their Appeal memorandum, have, inter-alia, mentioned the following  
  
grounds:  
  
The Incentive received from ITUL under Intel Approved Component Supplier Program  
  
(IACSP) is nothing but pre agreed Trade Discount:  
  
The Appellant submits that Section 15 of the CGST Act, 2017 provides for Valuation principles  
under GST. The relevant portion of Section 15 is section 15(3) reproduced below for ready  
reference:  
15. (3) the value of the supply shall not include any discount which is given—  
a. Before or at the time of the supply if such discount has been duly  
recorded in the invoice issued in respect of such supply; and  
  
b. Afier the supply has been effected, if-  
  
such discount is established in terms of an agreement  
  
entered into at or before the time of such supply and  
  
i.  
  
specifically linked to relevant invoices; and  
  
Input tax credit as is attributable to the discounts on the  
  
basis of documents issued by the supplier has been reversed  
  
by the recipient of the supply.  
  
Thus, as per the plain reading of the said Section 15(3), the Appellant can consider the  
  
incentive received as trade discount as condition mentioned in the said section is fulfilled.  
  
The Appellant relies on decision of Hon’ble Mumbai Tribunal in the case of Sharyu Motors  
  
v. Cominissioner of Service Tax [2016(43) S.T.R. 158 (Tri. Mumbai)]. In the said case the  
  
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issue was whether incentives received on achieving the sales target would be subjected to  
service tax or not as a business auniliary service. The Tribunal observed as under:  
  
“4s regards the Service Tax liability under the category of Business A uxiliary Services  
Jor the amount received and for achieving the target under Target Incentive Scheme,  
we find that the appellant had been given targets for specific quantum of sale by the  
manufacturers of the cars, As per the agreement, on achievement of such target and in  
excess of it, appellant was to receive some amount as an incentive, Lt is the case of the  
Revenue that such amount is taxable under Business Auxiliary Services; we find no  
substance in the arguments raised by the learned AR as well as the reasoning given by  
the adjudicating authority. The said amounts are incentive received for achieving the  
target of sales cannot be treated as Business Auxiliary Services, as incentives are only  
  
as trade discounts which are extended to the appellant for achieving the targets."  
  
It is thus submitted that even though the issue in the above decision was with respect to  
eligibility to tax under the business auxiliary services, the Tribunal went beyond the aspect of  
business auxiliary services and held that as the said Incentives are a form of trade discount, it  
would not be liable to tax. Said ratio would therefore continue to hold good even under the  
GST regime. Hence it is submitted that even under GST regime, the nature of such incentives  
would remain as “trade discount” and therefore it would not partake a character of a  
  
consideration against supply of any services.  
  
As against the above submissions of the Appellant, the MAAR has held that since in the  
present case the supply of goods in respect of which the incentives are purported to be given  
by IIUL are rendered by the distributors and not by ITUL, the incentive received from UL  
  
cannot be considered as trade discount.  
  
The above observation of the MAAR is without appreciating the facts and applicable law and  
  
hence bad in law. The ICASP agreement is entered into by the Appellant with ITUL at the start  
  
of every quarter. As per the said agreement, the Appellant is required to make purchases from  
the ITUL approved vendors and distributors only in order to be eligible for the incentives. The  
IIUL is further collecting data from its distributors on the supplies made to the Appellant  
under the IACSP program and accordingly calculating the incentive to be paid to the  
Appellant. Thus, there is a direct nexus from of the purchases made from the distributors and  
  
incentive received from HUL.  
  
The ITUL is not selling the goods directly to any reseller in India. The goods are sold through  
  
the distributors only. Thus, the Appellant is purchasing the goods from UL only through its  
  
distributors. Hence. the incentives received from IIUL is nothing but trade discount.  
  
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The —\_ further submits that, even if it is held that the goods are supplied by the  
distributors and incentive is given by ITUL, even then the said incentives are nothing but ade  
discount. There is no bar under the GST law or under the common law that trade discount  
should flow from the immediate vendor only. Even if the trade discount flow directly from  
  
original equipment manufacturer, still it shall be considered as the trade discount only.  
  
The MAAR has simply distinguished the above judgment on the ground that the said judgment  
is under the service tax regime and hence not applicable under the GST regime. However, it  
is a settled law that a ratio laid down in a judgment of the Higher Court is valid precedent  
  
under all branches of law.  
  
The incentive received by the Appellant from ITUL cannot be considered as any  
  
consideration for any supply  
  
The Appellant states that any incentive received after sale of products i.e. post sale discount  
is to be considered as trade discount and not consideration for any supply.  
The incentives received from IIUL under Intel Approved Component Supplier Program  
  
(IACSP) is post procurement of goods. As such discount itself says that these are directly  
  
linked to invoices. Therefore, these discounts are not considered as consideration for any  
  
taxable supply.  
  
The Appellant further submits that “consideration” has been defined u/s 2(31) of the CGST  
  
Act, 2017 as under:  
  
(31) ‘Consideration’ in relation to the supply of goods or services or both includes  
  
(a) any payment made or to be made, whether in money or otherwise, in respect of, in response  
  
to, or for the inducement of, the supply of goods or services or both, whether by the recipient  
  
or by any other person but shall not include any subsidy given by the Central Government or  
  
a State Government;”  
The Incentives accrue on actually achieving the sales targets and not on merely assuming any  
  
obligation of achieving the sales target.  
  
In respect of post supply discount section 15(3)(b) of CGST Act, 2017 provides that the same  
shall be available if such discount has established in terms of an agreement entered into at or  
before the time of such supply and specifically linked to relevant invoices. Therefore, on this  
  
ground it cannot be said that the Incentives are a consideration for supply of any product.  
  
d that ITUL has paid incentives to Appellant for increasing its business  
  
from Appellant to HUL. The aforesaid mentioned  
at Appellant is not  
  
The MAAR has observe:  
and therefore there appears to be a supply  
AAR is liable to be set aside on the grounds th  
  
observation of the M  
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providing any services to HUL. There is no service agreement between Appellant and ITUL.  
  
The agreement entered into between is the conditional incentive agreement, i.e. if the  
  
Appellant achieves the target as mentioned in the agreement, then ITUL shall provide the  
  
incentive. The said agreement in no way can be considered as a service agreement. If such an  
interpretation is given, then all target based discount agreements will be considered a service  
provided by one person to another. Hence, such and interpretation is not possible. Further,  
GST being a contract-based levy, the contract must specifically provide for any services to be  
  
provided by the Appellant to I'UL. The contract does not provide for any such service.  
  
It is further submitted that if the interpretation of the MAAR is accepted, it will lead to an  
anomaly. For example, the Appellant is invested its own money and bought the goods. There  
is 100 percent chances that despite its best efforts, the Appellant would not be able to achieve  
the targets for incentives. Thus, there is not supply of service from Appellant to ITUL even  
though the said purchases are made under the same agreement. it is only when the incentive  
is paid that the element of service is cropped in as per the interpretation of the MAAR. Such  
an interpretation is not tenable in law. No prudent person shall provide a service without a  
consideration. There may be a clause for additional condition for good quality service, but  
certainly there will be some minimum payment for any service provided by prudent person to  
another person. In the present case, there is no minimum consideration for the alleged services  
provided by the Appellant to ITUL under the IACSP. Thus, the said observation of the MAAR  
  
is bad in law and liable to be set aside.  
  
Without prejudice to the above, even if the incentives are considered as consideration  
  
for supply, even than the entire supply is export of service.  
  
Without prejudice, if it is held that the above transaction does not amount to discount, then  
the said transaction of Incentive may be considered as consideration for supply. Since there is  
  
no supply of goods involved between the Appellant and ITUL, the said supply will qualify as  
  
supply of service only.  
  
the present supply will qualify as export of service. In view of  
sec 2(6) of IGST Act the Appellant shall  
definition of export of  
  
In case of supply of service,  
specific definition of export of service defined unde  
be deemed to have exported the supply of service in question. The  
service is reproduced as below:  
  
“Export of services” means the supply of any service when,  
  
(i) The supplier of service is located in India;  
  
(ii) The recipient of service is located outside India;  
  
Ze (ii), Tv he place of supply of service is outside India;  
  
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(iv) The payment for s  
| ; cH service has been recelved by the suppller of service in  
  
convertible foreign exchange; and  
v) The s ler of ser  
( e supplier of service and the reciplem of service are not merely  
establishments of a distinct person in accordance with Explanation I in  
secnion 8)  
  
¢ MAAR has observed that the Appellant has fulfilled the clauses (i), (ii), (iv) and (v) but  
does not fullil the clause (iii) above mentioned conditions for “Export of Service”, With  
regards to the clause (iii), the MAAR has observed that, the Appellant is providing marketing  
services in respect of the goods which are required to be physically present in India and thus  
  
the place of supply will be determined as per 13(3)(a) of the [GST Act, 2017 which is in India.  
  
The above observation of the MAAR is entirely without any legal basis and contrary to factual  
matrix, The MAAR has failed to appreciate that, firstly there is no contract for any marketing  
of any goods belonging to IIUL. Secondly, the Appellant is themselves purchasing the goods  
and reselling the subject said goods in the market. Therefore, there is no service provided in  
respect of the said goods. It is a supply of goods and not supply of services by the Appellant.  
The MAAR has further failed to explain as to how trading in goods amounts to marketing of  
the said goods for the original manufacturer, if such an interpretation is adopted, any kirana  
store reselling goods for FMCG companies or any other manufacturer for that matter would  
  
be considered as a supply of marketing service to such FMCG companies or manufacturer.  
  
The Appellant further submits that as regard the observations of the MAAR that the present  
facts of the case fall under Section 13 (3)(a) of the IGST Act, 2017 is also incorrect. They said  
clause provides that the place of supply in a case where services are supplied in respect of  
goods which are required to be made physically available by the recipient of service to the  
supplier of service or to a person acting on behalf of the supplier of service in order to provide  
the service shall be the location of the supplier of service. In the present case the recipient of  
service is ITUL. UL does not make any goods physically available to the appellant for  
providing the service in respect of the any goods. Neither ITUL nor the distributors are making  
any goods physically available to the appellant for merely providing the services in respect of  
the said goods. The distributors are also selling off the goods to the appellant and the appellant  
becomes the absolute owner on the property of the said goods bought from distributors.  
  
Thereafter, the Appellant is reselling the said goods to end customers and not returning back  
  
‘tie said goods to the distributors or ITUL after any processing. Thus, the observation of the  
  
( MAAR is contrary to law and hence liable to be set aside.  
  
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a and recipient who jg  
  
is a supplier is Jocated in Indi  
ection 13(2) of  
  
f supply shall be determined as per s  
is located outside  
  
5.22 In the present case the Appellant who  
IIUL is located outside India, The place 0  
IGST Act, 2017 which is the location of recipient of service, Since UL  
  
India the pla  
  
ce of supply shall be outside India. Further, Incentive received are in convertible  
  
foreign exchange.  
Therefore all the condition of export of service is satisfied in present transaction. Once it Is an  
export of service the said service will be qualify  
  
an  
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w  
  
as Zero Rated Supplies. 7 ‘herefore, the said  
  
supply will not be liable for GST.  
PERSONAL HEARING  
  
PERSONAL HEARING  
ucted on 09.03.2023 which was attended by Shri.  
  
6. The personal hearing in the matter was cond  
ant and Shri. Dhirajkumar Kamble, Deputy  
  
Rahul Thakar, Advocate on behalf of the Appell  
  
commissioner, Division-IV, CGST, Mumbai South. During the personal hearing the Appellant  
  
reiterated their earlier submissions made while filing the Appeal under consideration.  
  
DISCUSSIONS AND FINDINGS  
  
7. We have carefully gone through the entire appeal memorandum containing the submissions  
made by the Appellant vis-a-vis the Advance Ruling passed by the MAAR, wherein the MAAR  
has held that incentive received from ITUL under  
IASCP program is not trade discount. Secondly, it was held that the said amount received is in  
consideration of supply. Thirdly, the incentive amount received doesn’t fulfill the conditions  
of export of service.  
  
8. Before we discuss the issues involved in the case, we would refer to the legal provisions relating  
to valuation of taxable supply, which are relevant to the case as under:  
  
8.1 The value of taxable supply is governed by the provisions of Section 15 of the CGST/SGST  
  
Act. This section specifies that  
  
(1) The value of a supply of goods or services or both shall be the transaction value, which is  
  
the price actually paid or payable for the said supply of goods or services or both where the  
  
supplier and the recipient of the supply are not related and the price is the sole consideration  
  
Jor the supply.  
(2) The value of supply shall include-  
(a) any taxes, duties, cesses, fees and charges levied unde:  
  
other than this Act, the State Goods and Services Tax Act, the  
  
r any law for the time being in Jorce  
Union Territory Goods and  
  
Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged  
  
separaiély by the supplier;  
  
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(b) any amount that the supplier is liable to pay in relation to such supply but which has been  
incurred by the recipient of the supply and not included in the price actually pald or payable  
for the goods or services or both;  
(c) incidental expenses, including commission and packing, charged by the supplier to the  
recipient of a supply and any amount charged for anything done by the supplier in respect of  
the supply of goods or services or both at the time of, or before delivery of goods or supply of  
services;  
(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and  
(e) subsidies directly linked to the price excluding subsidies provided hy the Central  
Government and State Governments.  
Explanation.-For the purposes of this sub-section, the amount of subsidy shall be  
included in the value of supply of the supplier who receives the subsidy.  
(3) The value of the supply shall not include any discount which is given-  
(a) before or at the time of the supply if such discount has been duly recorded in the  
invoice issued in respect of such supply; and  
(b) after the supply has been effected, if-  
(i) such discount is established in terms of an agreement entered into at or before the  
time of such supply and specifically linked to relevant invoices; and  
(ii) input tax credit as is attributable to the discount on the basis of document issued by  
the supplier has been reversed by the recipient of the supply.  
(4) where the value of the supply of goods or services or both cannot be determined  
under sub-section (1), the same shall be determined in such manner as may be  
prescribed.  
(5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value  
of such supplies as may be notified by the Government on the recommendations of the  
Council shall be determined in such manner as may be prescribed.  
Explanation. - For the purposes of this Act,-  
(a) persons shall be deemed to be "related persons” if-  
(i) such persons are officers or directors of one another's businesses;  
(ii) such persons are legally recognised partners in business;  
(iii) such persons are employer and employee;  
(iv) any person directly or indirectly owns, controls or holds twenty-five per cent.  
more, of. the outstanding voting stock or shares of both of them;  
Wy) one of them directly or indirectly controls the other;  
(vi) both Af them are directly or indirectly controlled by a third person;  
  
(vii) together they directly or indirectly control a third person, or  
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4 are members of the same family:  
  
(viii) the)  
rson" also includes legal persons; :  
ed in the business of one another in that one is the sole  
  
er described, of the other, shall  
  
(b) the term "pe  
  
(c) persons who are associat  
  
agent or sole distributor or sole concessionaire. howsoev  
  
be deemed to be related.  
n't been defined in GST law. Cambridge dictionary de  
- whereas as per Collins dictionary the  
  
The word discount has! fines the word  
  
‘discount’ to mean as “a reduction in the usual price”.  
  
word ‘discount’ to mean as “a reduction in the usual price of something”. Where a discount is  
  
mentioned on the invoice’s face. the discount may be reduced from the taxable value of the  
  
supply of goods. In the event the discount is not mentioned on the face of the invoice, the  
discount may still be reduced if-  
e The supplier and the buyer must have entered into an agreement that includes  
provision for the discount.  
e The discount is linked to a specific invoice.  
e Any input tax credit attributable to the discount must be reversed by the buyer or  
recipient of the supply.  
  
9.1 Therefore, to qualify as a trade discount the above three conditions should be satisfied that the  
buyer and the supplier have entered into an agreement which is not the case at present, as the  
incentive is being directly received from ITUL and agreement exists between the manufacturer  
and the supplier only and not with the distributor. Secondly, the incentive received is not  
directly linked to a specific invoice rather than the volume of sale undertaken by the authorized  
distributor of ITUL. Thirdly, there is no such reversal done by the Intel Authorized Distributors  
in the present case in relation to the goods supplied to the appellant. The discount or incentive  
that is given after the goods have been sold has to be established in terms of agreement entered  
into at or before such supply i.e. the discount that is to be given afterwards has to be mentioned  
in terms of the agreement or the criteria for arriving at the quantum or percentage of discount  
has to be given in terms of the agreement which is entered into at or before such supply. The  
wordings of Section 15(3)(b)(i) very clearly states that discount should be established in terms  
of the agreement entered into or at or before the time of such supply between the buyer and the  
supplier. Here the only agreement that is available on record is the agreement between ITUL  
and the appellant.  
  
9.2 Thus, the basic crux of the aforesaid discussion in the above is that to qualify as a trade discount,  
  
the same must be known prior to removal of the goods. Also, there should be a change in the  
  
taxable ‘value of the supply resulting in the reversal of the ITC. However, in the present case,  
the quantum of discount is not known at the time of removal of goods rather that is linked to  
  
the purchases done by the appellant from the authorized distributors of ITUL. Further, the  
  
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incentiv i  
Ive amount is not flowing from th  
  
and there is ¢ distribute . ;  
NO agreement as such with th T rather than from the actual manufact  
Ny icturer  
  
the M . distribu .  
  
¢ MAAR, the Appellant have contend lor, As regards the aforesaid observati  
  
Act, 2017, the ended that as per the provis} ; ions of  
» the appellant can consider the Provisions of Section 15(3) of CGST  
  
ant} \ incentive rece}  
mentioned in the aforesaid section is. f tive received as trade discount as conditic  
additional facts Section is fulfilled. ‘The appellant has ™  
acts rather than saying plainly that th as not come up with any  
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of trade incentive received by them are in the form  
  
discount, oH  
ae ae os has rightly observed that no sale transaction of goods has taken plac  
" nt and hence incentives will not be covered und igi - 4 “  
15(3) of CGST Act, 2017. For the incentives to qualify as trad .. eee  
seller and purchasing party is a prerequisite thes , : tra " discount an eal between  
the appellant. Thus, the incentive nena is missing between the distributor and  
tecsaslon mferset by te seve ‘om the manufacturer is separate from the  
soci decision of ritunal in sae ant with the — \_ the appellant has relied  
ryu Motors vs. Commissioner of Service Tax (2016(43) S.T.R.  
158 (Tri, Mumbai)], and have contended that the incentives are a form of trade discount.  
However. the facts of the case are different from the case law cited, In said case, the incentive  
was directly flowing from seller (the manufacturer of car) to purchaser (the car dealers), which  
  
is not the case at present. Thus, the incentives received from IIUL is not a trade discount.  
  
10. The second question raised by the appellant is that if incentives received by them are not  
  
considered as trade discounts, then whether it is consideration of any supply. To which MAAR  
held that in the absence of any supply of goods between IJUL and the appellant, IIUL is paying  
consideration to the appellant for receiving marketing services which could augment the sales  
of intel products.  
  
10.1 While going through the agreement between appellant and ITUL, it is evident that it is outcome-  
based contract, payment of incentives is wholly dependent on outcomes being achieved by the  
appellant in terms of quantifiable data of purchase / sale of intel products. In such outcome  
based contracts the responsibility to achieve the desired outcome is casted upon the supplier of  
services under said contract. The specifications and procedures that require to achieve the  
desired outcome are to be devised by the contractor. It is evident from the contract / agreement  
between appellant and ITUL that the amount received under scheme is to enhance supply, to  
emboss Intel brand in India and to keep customer base intact in INDIA and thus implied  
services are performed by appellant as per the outcome based contract.  
  
10. 2 The above observation is fortified with the terms of the agreement dated 27" December, 2020,  
wherein Para 4 of agreement determines the duties of “Component Supplier” i.e. the appellant  
“in the present case. The relevant part of the agreement has been produced as under, highlighting  
  
the scope of the duties:  
  
Page 11 0f 14  
. |  
  
COMPONENT SUPPLIER DUTIES  
4.1 Component supplier will use its best efforts to sell and market the Products, and will t \  
  
employ trained individuals in sufficient numbers to carry out its duties under this Agreement.  
  
Its sales and marketing personnel will be familiar with the Products, with competitive products,  
  
and with the types of applications and computing environments in which the Products may be  
  
used  
4.2 Component Supplier will assist Intel in implementing Intel’s marketing campaigns.  
  
4.4 Component supplier will be responsible for the translation of marketing and training  
  
materials provided by Intel subject to Intel's review and approval. Component Supplier will  
provide first-level technical product support within the Territory, and give prompt attention  
to inquiries from customers within the Territory.  
4.5 Component supplier will make its personnel available to attend Intel trainings and major  
technology industry events at its place of business or in a major city within the Territory, at no  
charge to Intel.  
10.3 Thus, from the above. it can be conclusively held that the appellant is bound by the agreement  
  
to perform the following tasks:-  
  
(i) They will make their best efforts to sell and market the Intel products  
  
(ii) Assist Intel in implementing Intel’s marketing campaigns  
  
(iii) Provide first-level technical product support.  
In lieu of the aforesaid services, the payout is being accrued to the appellant and not in the form  
of trade discount as claimed by them but in the form of supply of marketing as well as technical  
support services.  
  
11. In response to the third question as to whether the supply would fulfill the condition of export  
of service. To which MAAR held that the transaction between ITUL and the appellant doesn’t  
fulfill the condition of export of service as per the provisions of Section 2(6) of IGST Act. The  
MAAR held that the place of supply of service in the present case is outside India, hence,  
doesn’t fulfill the condition of clause (iii) of Section 2(6) of IGST Act, 2017. Further, Section  
13 of IGST Act, 2017 is used to the determine the place of service, which reads as under:  
  
13(1) (1) The provisions of this section shall apply to determine the place of supply  
of services where the location of the supplier of services or the location of the  
recipient of services is outside India.  
  
(2) The place of supply of services except the services specified in sub-sections (3) to  
  
(13) shall be the location of the recipient of services: Provided that where the location  
  
of the recipient of services is not available in the ordinary course of business, the  
  
place of supply shall be the location of the supplier of services.  
  
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(3) r he place of supply of the following services shall be the location where the  
services are actually performed, namely:—  
  
(a) services supplied in respect of goods which are required to be made physically  
available by the recipient of services to the supplier of services, or to a person acting  
on behalf of the supplier of services in order to provide the services: Provided that  
when such services are provided from a remote location by way of electronic means,  
the place of supply shall be the location where goods are situated at the time of supply  
of services: [Provided further that nothing contained in this clause shall apply in the  
case of services supplied in respect of goods which are temporarily imported into  
India for repairs or for any other treatment or process and are exported after such  
repairs or treatment or process without being put to any use in  
  
India, other than that which is required for such repairs or treatment or process;]  
(b) services supplied to an individual, represented either as the recipient of services  
or a person acting on behalf of the recipient, which require the physical presence of  
  
the recipient or the person acting on his behalf, with the supplier for the supply of  
  
services.  
(4) ..  
(13) In order to prevent double taxation or non-taxation of the supply of a service, or  
lication of rules, the Government shall have the power to notify  
  
for the uniform app:  
any description of services or circumstances in which the place of supply shall be the  
  
place of effective use and enjoyment of a service.  
  
11.1 Thus, as per Section 13(2), the place of supply of services except the services specified in sub-  
sections (3) to (13) shall  
  
place of supply of the foll  
  
be the location of recipient of services. Section 13(a) provides that the  
owing services shall be the location where the services are actually  
performed, namely:-  
  
(a) Services supplied in respect of goods which are required to be made physically  
available by the recipient  
on behalf of the supplier of services in order to provide the services.  
  
of services to the supplier of services, or to a person acting  
  
s are provided in respect of goods which are made  
  
11.2 In the present case, the marketing service:  
ices (i.e. ITUL through its distributors) to the  
  
physically available by the recipient of serv  
  
supplier of marketing services (i.e. the appellant), in order to provide the services. Therefore,  
  
as per Section 13(3)(a), the place of provision  
ce, we hold that the impugned supply does not  
  
of service is the location of the supplier of  
  
services i.e. the applicant, which is in India. Hen  
  
qualify as export of services.  
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12  
  
13.  
  
In view of the above discussions and findings, we pass the following order:  
  
Order  
  
We confirm and uphold the Advance Ruling Bearing No. GST-ARA-59/2020-21/B-56  
dated 27.04.2022 pronounced by the MAAR. Therefore, the Appeal filed by the  
  
(RAJEEV AR MYTAL) (Dr. D.K. SRINIVAS)  
MEMBER MEMBER  
  
Appellant is, hereby, dismissed.  
  
Copy to the:  
  
1. Appellant;  
  
2. AAR, Maharashtra  
  
3. Pr. Chief Commissioner, CGST and Central Excise, Mumbai Zone.  
  
4. Commissioner of State Tax, Maharashtra.  
  
5. Assistant Commissioner of State Tax (MUM-VAT-D-821), Nodal Division-02.  
6. Web Manager, WWW.GSTCOUNCIL.GOV.IN  
  
YY SS eee  
  
7. Office copy.  
  
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