THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX

(Constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)

ORDER NO. MAH/AAAR/DS-RM/04/2023-24 **Date-** 13.06.2023

BEFORE THE BENCH OF

(1) Dr. D.K. Srinivas, MEMBER (Central Tax)

(2) Shri. Rajeev Kumar Mital, MEMBER (State Tax)

Name and Address of the Appellant:	M/s MEK Peripherals India Private Limited, 108, Diamond Plaza, 1st Floor, 391, Dr. D.B. Marg, Lamington Road, Mumbai – 400 004
GSTIN Number:	27AAFCM5236L1Z6
Clause(s) of Section 97, under which the question(s) raised:	Section 97 (e) & (g).
Date of Personal Hearing:	09.03.2023
Present for the Appellant:	(i) Rahul Thakar, Advocate
Details of appeal:	Appeal No. MAH/GST-AAAR/05/2022-23 dated 27-05-2022 against Advance Ruling No. GST-ARA-59/2020-21/B-56 dated 27.04.2022.
Jurisdictional Officer:	Range-III, 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)

1. 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.

2. 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, 1st, Swastik Cinema Compound, 391 D. B. Marg Lamington Road,

Mumbai, Mumbai, Maharashtra, 400004. **("hereinafter referred to as "Appellant")** against the Advance Ruling No. GST-ARA-59/2020-21/B-56 dated 27.04.2022, pronounced by the Maharashtra Authority for Advance Ruling (hereinafter referred to as **"MAAR")**.

BRIEF FACTS OF THE CASE

3.1 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.

3.2 The Appellant is registered under the GST law at its place of business in the State of Maharashtra under the GSTIN 2727AAFCM5236L1Z6. Apart from the aforesaid; the Appellant is not registered in any other State in India.

3.3 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.

3.4 The Appellant has entered into agreement with "Intel inside US LLC" herein after referred to as (IIUL) 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 earn certain incentive as percentage of performance to quarterly goal on eligible Intel products.

3.5 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).

3.6 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?*

c) *If it is considered as supply than whether it will qualify as export of service?*

3.7 The MAAR vide order no. GST-ARA-59/2020-21/B-56 dated 27.04.2022. has held that: -

(i) The Appellant purchases the goods from the distributor and is not receiving discounts from the said distributors. Therefore, there is no supply of goods or services or both from IIUL 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 IIUL 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,

the incentive received from IIUL 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 IIUL, 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.

4. 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

5. The Appellant, in their Appeal memorandum, have, inter-alia, mentioned the following grounds:

The Incentive received from IIUL under Intel Approved Component Supplier Program (IACSP) is nothing but pre agreed Trade Discount:

5.1 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. *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 discounts on the basis of documents issued by the supplier has been reversed by the recipient of the supply.*

5.2 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.

5.3 The Appellant relies on decision of Hon'ble Mumbai Tribunal in the case of Sharyu Motors v. Commissioner of Service Tax [2016(43) S.T.R. 158 (Tri. Mumbai)]. In the said case the

issue was whether incentives received on achieving the sales target would be subjected to service tax or not as a business auxiliary service. The Tribunal observed as under:

> *"As regards the Service Tax liability under the category of Business Auxiliary Services for 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. It 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."*

5.4 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.

5.5 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 IIUL, the incentive received from IIUL cannot be considered as trade discount.

5.6 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 IIUL at the start of every quarter. As per the said agreement, the Appellant is required to make purchases from the IIUL 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 IIUL.

5.7 The IIUL 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 IIUL only through its distributors. Hence, the incentives received from IIUL is nothing but trade discount.

5.8 The Appellant further submits that, even if it is held that the goods are supplied by the distributors and incentive is given by IIUL, even then the said incentives are nothing but trade 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.

5.9 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 IIUL cannot be considered as any consideration for any supply

5.10 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.

5.11 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.

5.12 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;"

5.13 The Incentives accrue on actually achieving the sales targets and not on merely assuming any obligation of achieving the sales target.

5.14 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.

5.15 The MAAR has observed that IIUL has paid incentives to Appellant for increasing its business and therefore there appears to be a supply from Appellant to IIUL. The aforesaid mentioned observation of the MAAR is liable to be set aside on the grounds that Appellant is not

providing any services to IIUL. There is no service agreement between Appellant and IIUL. The agreement entered into between is the conditional incentive agreement, i.e. if the Appellant achieves the target as mentioned in the agreement, then IIUL 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 IIUL. The contract does not provide for any such service.

5.16 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 IIUL 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 IIUL 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.

5.17 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 IIUL, the said supply will qualify as supply of service only.

5.18 In case of supply of service, the present supply will qualify as export of service. In view of specific definition of export of service defined under sec 2(6) of IGST Act the Appellant shall be deemed to have exported the supply of service in question. The definition of export of 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;*

(iii) *The place of supply of service is outside India;*

(iv) *The payment for such service has been received by the supplier of service in convertible foreign exchange; and*

(v) *The supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;*

5.19 The MAAR has observed that the Appellant has fulfilled the clauses (i), (ii), (iv) and (v) but does not fulfil 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 IGST Act, 2017 which is in India.

5.20 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.

5.21 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 IIUL. IIUL does not make any goods physically available to the appellant for providing the service in respect of the any goods. Neither IIUL 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 the said goods to the distributors or IIUL after any processing. Thus, the observation of the MAAR is contrary to law and hence liable to be set aside.

5.22 In the present case the Appellant who is a supplier is located in India and recipient who is IIUL is located outside India. The place of supply shall be determined as per section 13(2) of IGST Act, 2017 which is the location of recipient of service. Since IIUL is located outside India the place of supply shall be outside India. Further, Incentive received are in convertible foreign exchange.

5.23 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 as Zero Rated Supplies. Therefore, the said supply will not be liable for GST.

PERSONAL HEARING

6. The personal hearing in the matter was conducted on 09.03.2023 which was attended by Shri. Rahul Thakar, Advocate on behalf of the Appellant and Shri. Dhirajkumar Kamble, Deputy 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 IIUL 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 for the supply.

(2) The value of supply shall include-

(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

(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 paid 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 by 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. or more of the outstanding voting stock or shares of both of them;

(v) one of them directly or indirectly controls the other;

(vi) both of them are directly or indirectly controlled by a third person;

(vii) together they directly or indirectly control a third person; or

(viii) they are members of the same family;

(b) the term "person" also includes legal persons;

(c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

9. The word discount hasn't been defined in GST law. Cambridge dictionary defines the word 'discount' to mean as "a reduction in the usual price", whereas as per Collins dictionary the 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-

- The supplier and the buyer must have entered into an agreement that includes provision for the discount.
- The discount is linked to a specific invoice.
- 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 IIUL 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 IIUL. 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 IIUL 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 IIUL. Further, the

incentive amount is not flowing from the distributor rather than from the actual manufacturer, and there is no agreement as such with the distributor. As regards the aforesaid observations of the MAAR, the Appellant have contended that as per the provisions of Section 15(3) of CGST Act, 2017, the appellant can consider the incentive received as trade discount as conditions mentioned in the aforesaid section is fulfilled. The appellant has not come up with any additional facts rather than saying plainly that the incentive received by them are in the form of trade discount. MAAR has rightly observed that no sale transaction of goods has taken place between the appellant and hence incentives will not be covered under the provisions of Section 15(3) of CGST Act, 2017. For the incentives to qualify as trade discount, an agreement between seller and purchasing party is a pre-requisite, the same is missing between the distributor and the appellant. Thus, the incentive received from the manufacturer is separate from the transaction undertaken by the appellant with the distributors. Further, the appellant has relied upon decision of tribunal in Sharyu 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 IIUL 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 IIUL, 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 IIUL 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 27th 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:

COMPONENT SUPPLIER DUTIES

*4.1 Component supplier will use its **best efforts to sell and market the Products**, and will 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**.*

4.3 ……

*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 IIUL 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.

(3) The 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 for the uniform application of rules, the Government shall have the power to notify 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 be the location of recipient of services. Section 13(a) provides that the 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.

11.2 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. IIUL 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), the place of provision of service is the location of the supplier of services i.e. the applicant, which is in India. Hence, we hold that the impugned supply does not qualify as export of services.

12. In view of the above discussions and findings, we pass the following order:

Order

13. 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 Appellant is, hereby, dismissed.

(RAJEEV KUMAR MITAL)
MEMBER

(Dr. D.K. SRINIVAS)
MEMBER

Copy to the:

1. **Appellant;**
2. **AAR, Maharashtra**
3. **Pr. Chief Commissioner, CGST and Central Excise, Mumbai Zone.**
4. **Commissioner of State Tax, Maharashtra.**
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