

AUTHORITY FOR ADVANCE RULING No. GST-ARA-59/2020-21/B-56, Dated 27th April, 2022

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)

ARN No.		AD271220012048P
GSTIN Number, if any/ User-id		27AAFCM5236L1Z6
Legal Name of Applicant		M/s. MEK Peripherals India Pvt Ltd.
Registered Address/Address provided while obtaining user id		108, Diamond Plaza, 1st Floor, 391, Dr. D.B. Marg, Lamington Road, Mumbai-400004
Details of application		GST-ARA, Application No. 59 Dated 21.12.2020
Concerned officer		Commissionerate- Mumbai South, Division-IV, Range - III
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	Service Provision
B	Description (in brief)(As per applicant)	Applicant is a reseller of Intel Products.
issue/s on which advance ruling required		> Determination of the liability to pay tax on any goods or services or both > Whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term
Question on which advance ruling required		As reproduced in para 01 of the Proceedings below

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 M/s. MEK Peripherals India Pvt. Ltd., the applicant, seeking an advance ruling in respect of the following questions.

- 1.Whether the Incentive received from Intel inside US LLC under Intel Approved Component Supplier Program (IACSP) can be considered as Trade Discount?
- 2.If not considered as Trade Discount then whether it is consideration for any supply?
- 3.If it is considered as supply than whether it will qualify as export of service?

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

- 2.1. The Applicant, M/s. MEK Peripherals India Pvt Ltd is a reseller of Intel products and registered under the GST laws in Maharashtra.
- 2.2The Applicant has submitted that various GST registered distributors import the product from Intel inside US LLC and the Applicant purchases the products from the said Distributors and further sells the same product to various retailers.
- 2.3That they have entered into agreement with Intel inside US LLC under Intel Authorized Components Supplier Program (IACSP) and thereby will receive a non-binding Plan of Record Target (POR Target) under which, Applicant will earn certain incentive as percentage of performance to quarterly goal on eligible Intel products.
- 2.4That, as per agreement they receive Incentives on completion of targets set under said agreement in Intel Authorized Components Supplier Program (IACSP).
- 2.5That Incentive received from Intel Inside US LLC under Intel Approved Component Supplier Program (IACSP) is considered as Trade Discount as per the provisions of Section 15 (3) of the CGST Act, 2017.
- 2.6 The Applicant 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) where Issue was whether incentives received on achieving the sales target would be subjected to service tax or not as a business auxiliary service and The Tribunal observed that "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."
- 2.7Applicant has 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, even under GST regime, the nature of such incentives would remain as "trade discount & therefore would not partake character of a consideration against supply of any services.
- 2.8.1The next question raised by the applicant is If the incentives received are not considered as Trade Discount then whether it is consideration for any supply.
- 2.8.2The Applicant submits that the incentives received from Intel inside US LLC 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 Applicant further submits that the Incentives accrue on actually achieving the sales targets and not on merely assuming an obligation of achieving the sales target. In respect of post supply discount section 15(3) (b) of the Act 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.
- 2.9.1Finally the applicant has asked if it is considered as supply than whether it will qualify as export of service.
- 2.9.2Without prejudice, if it is held that the impugned 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 applicant and Intel inside US LLC, the said supply will qualify as supply of service only and 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.
- 2.9.3In the present case the supplier of services (applicant) is located in India and recipient who is Intel inside US LLC is located outside India. As per Section 13 (2) of the IGST Act, 2017, the place of supply is the location of recipient of service and since Intel inside US LLC is located outside India the place of supply shall be outside India. Further, Incentive received is 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 as zero rated Supplies. Therefore, the said supply will not be liable for GST.

03. CONTENTION - AS PER THE CONCERNED OFFICER:

The jurisdictional officer has not made any written submissions in the matter.

04. HEARING

- 4.1 preliminary e-hearing in the matter was held on 07.12.2021. The Authorized representative of the applicant, Shri. Rahul Thakkar, Advocate was present and made submissions pertaining to admission of the application. The Jurisdictional officer was absent. Applicant was requested to produce relevant records, correspondence, agreements or other proof in support of the contentions made.
- 4.2The application was admitted and Final e-hearing was held on 29.03.2022. The Authorized representative of the applicant, Shri. Rahul Thakkar, Advocate was present. The Jurisdictional officer Shri. Dinesh Jindal, Superintendent, Mumbai South Commissionerate, was also present. Application is heard. The jurisdictional officer was directed to file written submission within a weeks' time.

05. OBSERVATIONS AND FINDINGS:

- 5.1We have understood the facts of the matter, perused the documents on record and submissions, both oral and written made by the applicant. In spite of directions, the jurisdictional officer has not made any written submissions.
- 5.2We observe that, the Applicant is a GST registered person in Maharashtra and is a reseller of Intel products which they purchase from the from various Distributors of Intel Inside US LLC (IIUL). These products are imported by the various distributors from IIUL and sold to Applicant for further sale to various retailers. The Applicant has further submitted that they have entered into agreement with IIUL under Intel Authorized Components Supplier Program (IACSP) pertaining to a non-binding Plan of Record Target (POR Target) under which the Applicant will earn certain incentives directly from IIUL as a percentage of performance to quarterly goal on eligible Intel products.

5.3The applicant's contention is that the Incentive received from IIUL under Intel Approved Component Supplier Program (IACSP) should be considered as Trade Discount as per the provisions of Section 15 of the CGST Act, 2017.

5.4As per Section 9 (1) of the CGST Act, 2017, tax is levied on the supply of goods or services on the value determined under Section 15 of the CGST Act, 2017. The scope of supply as defined under Section 7 of the CGST Act, 2017 includes supply of goods or services or both by way of sale made or agreed to be made for a consideration. Section 15 of the CGST Act, 2017 further provides that the value of supply shall be the transaction value, which is the price actually paid or payable for the supply in question.

5.5.1Section 15 (3) of the CGST Act, 2017 which according to the applicant's submissions is relevant in the subject case is reproduced as under:-

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 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

5.5.2 From the submissions we find that the applicant purchases the goods from the distributors and is not receiving discounts from the said distributors. Therefore, there is no supply of goods or services or both from IIUL to the applicant, no sale transaction of goods in the instant case between the applicant and IIUL and hence, the 'incentives' received by the applicant from IIUL will not be covered under the provision of Section 15 (3) mentioned above. There is no way that the said 'incentives' can be treated as Trade Discount given by IIUL to the applicant because the supply of goods in respect of which the incentives are purported to be given are rendered by the distributors and not by IIUL.

5.5.3The Applicant 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). We find that the facts of the said referred case law are not similar to the facts of the instant case and further, the relied upon case law pertains to the Erstwhile Service Tax regime and is not applicable in the current GST regime.

5.5.4In view of the above the Incentive received from Intel Inside US LLC under Intel Approved Component Supplier Program (IACSP) cannot be considered as Trade Discount.

5.6 The second question raised by the applicant is if the incentives received by them are not considered as Trade Discount then whether it is consideration for any supply?

5.6.1From the submissions it is seen that IIUL has appointed various distributors to sell the company's products in India and the applicant is not a distributor. If the distributors had given Trade Discounts to the applicant, maybe such a case could have been covered under Section 15 (3) of the GST Act, 2017. There is no such discount or incentive received by the applicant from the distributors from whom the impugned goods are being purchased for further sale down the line. The only reason for the applicant to receive incentives in the subject case appears to be for increasing the business of IIUL and therefore there appears to be a supply of services in the subject case since there is no supply of goods at all between the applicant and IIUL.

5.6.2Since some amount, in the form of incentives, is flowing from IIUL to the applicant, in the absence of supply of goods between the concerned persons it appears that IIUL is paying consideration (in the form of incentives) to the applicant for receiving marketing services which would augment the sale of Intel products in the country. Therefore, the said amounts received by the applicant cannot be considered as Trade Discounts received.

5.7.1 In response to the third question, on the basis of the facts of the matter, we are of the opinion that, the applicant is rendering marketing services to IIUL since the main intention of the agreement between IIUL and the applicant is for increasing the sales of Intel Products.

5.7.2 For the present supply to qualify as export of service, the impugned transaction should be covered under the provisions of sec 2(6) of IGST Act which defines the term 'Export of services' as under :-

2(6) '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;

5.7.3 From the submissions of the applicant we observe that clauses (i), (ii), (iv) and (v) are satisfied in the instant case. What is required to be seen is whether the place of service for the Incentives received, is outside India. We therefore refer to Section 13 of the IGST Act, 2017, which is reproduced as under:-

13. (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 and are exported after repairs without being put to any other use in India, than that which is required for such repairs;

(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).....

(5).....

(6)Where any services referred to in sub-section (3) or sub-section (4) or sub-section (5) is supplied at more than one location, including a location in the taxable territory, its place of supply shall be the location in the taxable territory.

(7)Where the services referred to in sub-section (3) or sub-section (4) or sub-section (5) are supplied in more than one State or Union territory, the place of supply of such services shall be taken as being in each of the respective States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

(8).....

(9).....

(10).....

(11).....

(12).....

(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.

5.7.4 As per Section 13 (2), the place of supply of services except the services specified in subsections (3) to (13) shall be the location of the recipient of services.

Section 13 (3) (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.

5.7.5 In the instant 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 applicant), in order to provide the services. Therefore, as per Section 13 (3) (a), the place of provision of services 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.

06.In view of the above discussions 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): - Whether the Incentive received from Intel inside US LLC under Intel Approved Component Supplier Program (IACSP) can be considered as Trade Discount?

Answer: - Answered in the negative.

Question 2):- If not considered as Trade Discount then whether it is consideration for any supply?

Answer:- Answered in the affirmative.

Question 3): - If it is considered as supply than whether it will qualify as export of service?

Answer: - Answered in the negative.

PLACE:- Mumbai

DATE:- 27/04/2022

RAJIV MAGOO

T. R. RAMNANI

(MEMBER)

(MEMBER)

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