

Incentive received for achieving sales target cannot be said as a trade discount, it shall be taxable in the hands of reseller as consideration for marketing services - Maharashtra AAR

20 May 2022



Summary

The Maharashtra Authority of Advance Ruling (AAR) has observed that the applicant has purchased goods from distributors, however, incentive has been received from the supplier of such distributors (the company). The AAR noted that there is no supply of goods or services, or both, from the company to the applicant. Hence, the incentive received in respect of the goods purchased from the distributor cannot be considered as a trade discount. The AAR opined that the purpose of the incentive was to augment sales/business of the company. Thus, it may be deemed as a consideration received for supply of deemed marketing services. Further, the advance ruling authority observed that the goods in respect of which deemed marketing services was supplied were made available to the applicant at his location. Therefore, the place of supply of such marketing services shall be at the location of the applicant and hence, it cannot be considered as export of services.

Facts of the case

- The applicant¹ is a reseller of Intel products. The applicant purchases the products from various GST registered distributors who import products from IIUL² and further sells the products to various retailers.
- The applicant entered into an agreement with IIUL under IACSP³ wherein the applicant would earn certain incentive from IIUL on completion of set targets.
- The applicant relied on decision of Mumbai tribunal⁴ wherein it was held that incentives received are trade discount and cannot be treated as business auxiliary services. Similarly, the applicant contended that the incentives are trade discount and would not partake the character of consideration for any taxable supply.
- The applicant approached the Maharashtra AAR to understand whether the incentives will be treated as trade discounts or consideration for any supply.

Maharashtra AAR observations and ruling⁵:

- **Incentive cannot be treated as trade discount:** In the instant case, there is no supply of goods from IIUL to applicant, but the applicant received incentive from IIUL for achieving certain targets. There is no sale transaction between applicant and IIUL. The supply of goods to applicant has been rendered by distributors and not IIUL. Thus, the incentives cannot be covered under the provisions⁶ and in no way, can be treated as trade discounts.
- **Incentive is a deemed marketing service:** The incentive flowing from IIUL to the applicant appears to be consideration for receiving marketing services to augment sales in the country. Therefore, the said amounts cannot be considered as trade discounts received by applicant.
- **Marketing services do not qualify as export of service:** The marketing services are provided by the applicant in

¹ M/s. MEK Peripherals India Pvt Ltd

² Intel Inside US LLC

³ Intel Authorized Components Supplier Program

⁴ Sharp Motors v Commissioner of Service Tax 2016(43) S.T.R. 158 (Tri. Mumbai)

⁵ GST-ARA-59/2020-21/B-56 order dated 27.04.2022

⁶ section 15(3) of CGST Act, 2017

respect of goods that are supplied by the IIUL through its distributors. As per the provision⁷, the place of rendering of service is the location of supplier. Since the location of applicant is in India, the supply does not qualify as an export of service.

Our comments

As per Section 15(3) of the CGST Act, 2017, value of supply shall not include any discount given after the supply if such discount is established in terms of agreement entered into at or before the time of such supply.

However, in the present case, there is no supply between the company and reseller, hence incentive received by reseller from the company to augment its sales cannot be considered as a trade discount. Further, the Maharashtra AAR has held that such incentive shall be treated as a consideration for marketing services.

Moreover, it seems that this ruling shall not be appreciated by the taxpayers as it is resulting in GST liability on the resellers upon receiving such incentives from the company. Though the AAR's decision is applicable only to the applicant, the department may consider this ruling in other cases as well.

⁷ Section 13(3)(a) of IGST Act, 2017

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