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/SS-RJ/07/2019-20 **Date- 04.10.2019**

BEFORE THE BENCH OF

(1) Smt. Sungita Sharma, MEMBER

(2) Shri Rajiv Jalota, MEMBER

GSTIN Number	27AAGCM0997F1Z8
Legal Name of Appellant	Multiples Alternate Asset Management Private Limited
Registered Address	701/A, Poonam Chambers, 'B' Wing, Dr. Annie Besant Road, Worli, Mumbai 400018
Details of appeal	Appeal No. MAH/GST-AAAR-07/2019-20 dated 08.07.2019against Advance Ruling No. GST-ARA-81/2018-19/B-25 dated 06.03.2019
Jurisdictional Officer	Asstt. Commr. of CGST, Division -VIII, Mumbai Central Commissionerate

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 "the CGST Act and MGST Act"] by Multiples Alternate Asset Management Private Limited (herein after referred to as the "Appellant") against the Advance Ruling No. GST-ARA-81/2018-19/B-25 dated 06.03.2019.

BRIEF FACTS OF THE CASE

1. Multiples Alternate Asset Management Private Limited (hereinafter referred to as the **"Appellant"**) is an Investment Advisory Firm whose Registered Office is in 701/A, Poonam Chambers, 'B' Wing, Dr. Annie Besant Road, Worli, Mumbai 400018, India and hold GSTIN **27AAGCM0997F1Z8**. The Appellant provides Investment Advisory & Management Services (SAC Code: 997153).

2. The Appellant filed an Application before The Authority for Advance Ruling (AAR) on 27.09.2018 seeking confirmation of its interpretation of the law with regard to applicability of GST on its Services.
3. The AAR granted hearing on 05.12.2018 and 10.01.2019 wherein the Appellant represented the matter and made Written Submissions subsequently to record the submissions.
4. The Authority for Advance Ruling passed its Ruling dated 06/03/2019 which was received by the Appellant by email on 10th June 2019.
5. The Appellant, aggrieved by the Ruling passed by the AAR is filing this appeal under Section 100 of the CGST Act, 2017 before the Appellate Authority for Advance Ruling (AAAR).

6. The detailed background of the case along with documentation and the surrounding legal interpretation is explained in the Ground of Appeal Below:

GROUNDS OF APPEAL

7. About the Appellant

7.1 Multiples Alternate Asset Management Private Limited (or the Appellant) is an Investment advisory firm that currently advises and manages approx. USD 1 billion of Private Equity Funds. The Appellant's firm has an Investment team comprising of seasoned private equity professionals who operate with an entrepreneurial mindset and have full cycle track record of investing, nurturing and exiting investments.

7.2 There is a dedicated team of 14 investment professionals from varied backgrounds having experience in the field of investments who are primarily responsible for the functioning of the Appellant. These are supported by a team of 9 persons responsible for accounting, HR, secretarial, IT, admin and other allied functions.

7.3 Founded in 2009, the Appellant is guided by its vision to generate Superior Returns by Creating Distinctive Investments with Conviction and forging lasting Partnerships with all Stakeholders.

8. Services provided by the Appellant

8.1 The Appellant provides Investment Advisory & Management Services. The Appellant raises Funds from various investors located throughout the world, pools the Funds in an Investment Vehicle registered by SEBI under the SEBI (Alternate Investment Fund) Regulations, 2012 ("AIF") and makes investment in various Indian Companies to provide Returns to the investors in the capacity of Investment Manager. The Modus Operandi of the Appellant is explained below.

8.2 The Services provided by the Appellant can be broadly categorized into the following –

a) Setting up of the Fund
b) Fund Raising
c) Pooling of Investments into AIF
d) Managing the Investments pooled in the AIF

The detailed activities covered under each head above is explained below.

8.3 *Setting up of Fund*

#	Questions	Answers
8.3.1	Who Sets up the AIF?	- The Appellant sets up the AIF as a sponsor - The Appellant undertakes detailed discussions with the lawyers and tax consultants to prepare the fund structure
8.3.2	Who prepares the Private Placement Memorandum and Fund Constitutive Documents	The Appellant prepares the Private Placement Memorandum and the Fund Constitutive Documents and thereafter submits the same to SEBI for approval and to obtain necessary licenses/certificates
8.3.3	Whether the AIF can function on its own?	- The AIF has no Employees, No Infrastructure. It is just an Investment Vehicle and cannot function without the Appellant (the Investment Manager) - The AIF cannot take any decision on itself with regard to any matter including Investment or Disinvestment decisions on behalf of the investors. The decision-making rests solely with the with the Appellant. - In fact, the status of the AIF under SEBI and Income Tax is explained in detail below this Table
8.3.4	Does the AIF retain Profits?	The AIF does not retain Profits. All Profits are paid back to the investors as Return on Investment

8.3.5 AIF is a pooling pass through Investment Vehicle

It is important to understand that the Alternate Investment Fund (AIF) is only a pooling Investment Vehicle. The AIF does not undertake any business and is used only as a Pooling Vehicle for making Investments. As stated in the above table, the AIF cannot function on its own and all profit and loss incurred on investments and other income/expenses are allocated and adjusted to investors Net Asset Value at each balance sheet date or distributed as per the terms of the AIF to the investors.

The nature of AIF as a pass-through vehicle under different regulations is explained below -

8.3.5.1 ***SEBI Regulations:*** As per definition AIF contained in Reg 2(1)(b) of the SEBI (AIF) Regulations, 2012 – AIF is a "privately pooled investment vehicle for investing it in accordance with a defined investment policy for the benefit of its investors;". The SEBI introduced AIF for enabling pooling of Investments by Companies like the Appellant to provide Investment Advisory & Management Services for the funds pooled in the AIF and provide Returns on the Investments.

8.3.5.2 **Income Tax:** The Pass-Through nature of income is provided in Sec 10(23FBA) read with Sec 115UB of the Income Tax, 1961 which is reproduced below –

"Section 10: In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included

(23FBA) any income of an investment fund other than the income chargeable under the head D.—"Profits and gains of business or profession";

It may be noted that for the purposes of section 10 (23FBA), the expression "investment fund" shall have the meaning assigned to it in clause (a) of the Explanation 1 to section 115UB (reproduced below);';

> *(a) "investment fund" means any fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which has been granted a certificate of registration as a Category I or a Category II Alternative Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012, made under the Securities and Exchange Board of India Act, 1992 (15 of 1992);"*

Section 115UB (1) : any income accruing or arising to, or received by, a person, being a unit holder of an investment fund, out of investments made in the investment fund, shall be chargeable to income-tax in the same manner as if it were the income accruing or arising to, or received by, such person had the investments made by the investment fund been made directly by him;

8.3.5.3 ***GST:*** The AIF is neither engaged in any supply of goods or services nor engaged in any business. It is registered under GST **ONLY** because it required under Sec 24(iii) of the CGST Act, 2017 as it receives services which is liable to **Reverse Charge.** There is no Outward Supply made by the AIF nor any Output Tax Liability. This further proves that status of the AIF being a Pass-Through Investment Vehicle.

8.4 *Fund Raising*

#	Questions	Answers
8.4.1	Who Does the Fund-Raising Activity?	- The Appellant does the fund-raising activity by approaching each investor explaining them the Investment Opportunity in India and the Indian Growth Story to seek his investment
8.4.2	Whether the Appellant can reject any investor into the Fund?	- It is the discretion of the Appellant whether or not to accept any investor into the Fund, irrespective of his eligibility or investment size. - Before accepting the Commitment from any investor, the Appellant performs KYC/AML checks as required
8.4.3	What is done by the investors?	- If the investor is convinced to invest in India, he will provide his Commitment. - Before providing their commitment, the investors may conduct detailed due diligence on the Appellant of its investment team, processes, policies, systems, service providers, etc. - Certain investors may wish to seek meeting with past portfolio companies and seek references from other existing investors as part of their diligence of the Appellant. - There could be and/or are specific terms for certain investors

		like a) fee and other commercials terms are investor specific, b) process of calling capital would have investor specific conditions to be adhered by Appellant c) one or more investors may have rights to approve certain decisions (in respect of investment) of Appellant d) investor may have certain specific terms agreed in respect of functioning of certain aspects of operations of the Appellant

8.5 *Pooling of Investors into AIF*

- At the time of registration with SEBI, the AIF specifies the Appellant as the proposed Investment Manager of the AIF which is effective on completion of registration with SEBI.
- After such registration from SEBI, the Commitments are obtained from investors / Contributors and pooled into the AIF.
- The investors do not generally know each other – either before or after the fund-raising activity. The relationship of each investor is with the Appellant only.
- The Appellant raises the funds from various investors and pools them into the AIF. It is **NOT** a case where the investors pool into a Fund on their own and thereafter appoint the Appellant as Manager.

8.6 *Managing the Investments pooled in the AIF*

Once the investor's funds are pooled by the Appellant, the Appellant undertakes the following functions -

- Investment Decisions
  a) Certain investors may have excuse rights for investing in specific company
  b) Some investors may have specific conditions in respect of Environmental, Social and Governance aspects while investing in any company
  c) Identifying and Evaluating Investment opportunities across various sectors

d) Due Diligence of the Investment opportunities

e) Negotiating terms of Investments and Making Investment decisions

- Monitoring & Reporting

a) Continuous Monitoring of Portfolio Companies where the funds are Invested

b) Computation of Value of Net Assets for each investor Separately and not at AIF Level.

c) Preparing the communications for the contributors on a quarterly basis; providing updates on the business & financial performance of portfolio companies.

d) Certain investors may seek additional information or reporting in order to meet their internal requirements, in addition to the above regular reporting

- Transfer/Redemption

a) For Transfer/Redemption, the investor needs to obtain prior approval of the Appellant and the same is not freely transferable.

- Divestment Decisions

a) Making Divestment decisions for the Portfolio companies at the appropriate time and price

b) Realizing, exchanging or distributing Portfolio Investments which will include the purchase, subscription, acquisition, sale and disposal of Portfolio Investments, with the principal objective of providing the investors with high returns.

Therefore, it is very clear from the above, that the relationship of the Investors/ Contributors is with the Appellant. The Contributors are the beneficiaries of the services provided by the Appellant. And without the Appellant, the Contributors will not invest in the AIF.

9 Services Fee received by the Appellant

9.1 For the Investment Advisory & Management Services provided by the Appellant, they will receive "Advisory & Management Fees" from the Domestic and Overseas Contributors.

9.2 The Advisory & Management Fee may vary from one Contributor to another based on funds invested, investor credentials, restrictions, reporting requirements and such others. The Fee is negotiated with each Contributor and accordingly a separate "Advisory & Management Fee Agreement" is entered with each Contributor.

9.3 The Appellant raises invoices at regular intervals every year on the Contributors. The Domestic Contributors pay in Indian Currency and the Overseas Contributors pay in US Dollars.

9.4 **IMPORTANT:** The Contributors are liable to make payment of the Advisory & Management Fee to the Appellant for the services. In event of any failure to make payment of fees by any Contributor, the Appellant has **no recourse to recover the fees from the AIF.** This is specifically agreed in the Investment Management Agreement (IMA) (Para 6.2 Page 13), Contribution Agreement (Para 3.2 Page 9). Relevant Extract from the Agreements relating to said non-recourse is reproduced below –

*"**Advisory and Management Fee***

For the investment advisory and management services rendered in respect of the Fund Assets, the Investment Manager shall be entitled to receive from the Contributors an Advisory and Management Fee (the "Advisory and Management Fee"). Such Advisory and Management Fee shall be payable by the Contributors and shall be computed on the basis as identified for each such Contributor as set forth in the respective agreement entered into by the Investment Manager and the Contributor with respect to Advisory and Management Fee ("Advisory and Management Fee Agreement").

The Parties agree that the AIF shall have no liability to pay the Advisory and Management Fee and that such amounts shall be payable solely by the relevant Contributors, and that the Investment Manager shall not have any recourse to the AIF in respect of the same."

In fact, in the event of failure to make payment by any Contributor, the Fund or the other Contributors in the Fund cannot be held responsible.

From the above, it is evident that the Contributors are liable to make payment of fees to the Appellant for the services and the Fund has no obligation to make the payment at all.

Findings by the Authority for Advance Ruling & Appellant's Defense

10 **Questions put forth before the AAR**

QUESTION 1: Whether GST is applicable on the Advisory & Management Fees received in Indian Currency from Domestic Contributors located in India for the Services rendered by the Appellant?

QUESTION 2: Whether GST is applicable on the Advisory & Management Fees received in Foreign Currency from Overseas Contributors located outside India for the Services rendered by the Appellant?

11 **Appellant's Legal Interpretation**

11.1 The Services of Investment Advisory & Management Services provided by the Appellant falls under SAC Code 997153 with a Rate of 18%

11.2 Services provided to the Domestic Contributors is liable to GST at the rate of 18%. CGST+SGST or IGST to be applied will be determined by Place of Supply as per Sec 12(12) of the IGST Act, 2017.

11.3 Services provided by the Appellant in respect of the contributions made by Overseas Contributors will fall under Export of Services as per Sec 2(6) of the IGST Act, 2017 and will be treated as Zero Rated Supply as per Sec 16 of the IGST Act, 2017 as it satisfies all the conditions of Export stipulated in the aforesaid Section which is explained again by way of table for quick reference –

Cl.	Condition	Explanation
(i)	the supplier of service is located in India;	The Appellant (Service Provider) is located in India
(ii)	the recipient of service is located outside India;	The Overseas Contributors ("Recipient" as per Sec 2(93) of CGST Act) are located outside India
(iii)	the place of supply of service is outside India;	Yes. As Per Sec 13(2) of the IGST Act, 2017
(iv)	the payment for such service has been received by the supplier of service in convertible foreign exchange;	Yes. Consideration received in convertible foreign exchange
(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;	The Supplier and Recipient are distinct Persons.

12 **AAR's Findings**

12.1 The AAR has gone beyond the law to make assumption with regard to who is the recipient of Service by completely disregarding the facts emanating from the agreements.

12.2 Instead of relying on such facts, the **AAR has conveniently assumed** the "Person Liable to make the Payment" to be the AIF, which is contrary to the factual position in the agreements -

a) They have stated that the AIF is liable to make the payment and therefore is the recipient of Service

b) The Receipt of Payment from the investors is probably an Internal Arrangement and not proper in the normal course of business

c) "Person Liable to Pay" cannot be equated with "Person who has paid"

Therefore, accordingly to the AAR ruling, since the AIF is liable to make payment, they are the Recipient of Service as per Sec 2(93) of the CGST Act, 2017 and the Place of Supply is to be determined by Sec 12(12) for both Domestic and Overseas Contributors which would be taxable at 18%.

13 **The Appellant's Defense**

13.1 The above assumptions made by the AAR are **factually incorrect** which is explained below -

a) The **Liability to make payment** is with the Contributors as per the Agreements entered with them. The same is explained in Para 9.4 earlier which is reproduced below for ready reference –

*"**Para 9.4-***

***IMPORTANT:** The Contributors are liable to make payment of the Advisory & Management Fee to the Appellant for the services. In event of any failure to make payment of fees by any Contributor, the Appellant has **no recourse to recover the fees from the AIF.** This is specifically agreed in the Investment Management Agreement (IMA) (Para 6.2 Page 13), Contribution Agreement (Para 3.2 Page 9). Relevant Extract from the Agreements relating to said non-recourse is reproduced below –*

*"**Advisory and Management Fee***

For the investment advisory and management services rendered in respect of the Fund Assets, the Investment Manager shall be entitled to receive from the Contributors an Advisory and Management Fee (the "Advisory and Management Fee"). Such Advisory and Management Fee shall be payable by the Contributors and shall be computed on the basis as identified for

each such Contributor as set forth in the respective agreement entered into by the Investment Manager and the Contributor with respect to Advisory and Management Fee ("Advisory and Management Fee Agreement").

The Parties agree that the AIF shall have no liability to pay the Advisory and Management Fee and that such amounts shall be payable solely by the relevant Contributors, and that the Investment Manager shall not have any recourse to the AIF in respect of the same."

In fact, in the event of failure to make payment of fees by any Contributor, neither the Fund nor the other Contributors in the Fund can be held responsible.

From the above, it is evident that the Contributors are liable to make payment of fees to the Appellant for the services received and the Fund has no obligation to make the payment at all."

b) The Services provided by the Appellant are as established in Para 8.1 to 8.7. To state that receipt of payment from the investors is *"probably an Internal Arrangement"* is absurd. The Appellant and the investors are un-related parties having business relationship.

c) Moreover, any Person may agree to pay for a service only if they are receiving any benefit of the service. The Contributors make payment to the Appellant because they are the beneficiary of the service and liable to make payment to the Appellant for the Investment Advisory & Management Services rendered.

d) With regard to the statement made by the AAR that - "Person Liable to Pay" cannot be equated with "Person who has paid" – we submit that, the Contributors are the Persons who are liable to Pay and have therefore made the payment.

13.2 As per Sec 2(93) of the CGST Act, "Recipient" is defined as the "person who is liable to pay the consideration for supply of goods or services or both". Therefore, in light of the above, the **Contributors are liable to make payment to the Appellant and thus are the "Recipient of Service" as defined in Sec 2(93) of the CGST Act, 2017.** Therefore, the Services provided in respect of the contributions made by the Domestic Contributors are taxable and the Services Provided in respect of the contributions made by the Overseas Contributors are Zero Rated Supply as explained earlier in Para 11.2 & 11.3 respectively.

Prayer

14 In light of the above submissions, we pray that –

"The Service Provided by Appellant (Service Provider) to Overseas Contributors (Recipient of Service as per Sec 2(93) of the CGST Act, 2017) to be held by your honorable good-self as Export of Service as per Sec 2(6) of the IGST Act, 2017 and to be treated as a Zero-Rated Supply as per Sec 16 of the said Act."

PERSONAL HEARING

15. A personal Hearing in the matter was conducted on 04.10.2019, which was attended by Shri D. Arvind, representative of the Appellant, as well as by Shri Vivek Anand, the Jurisdictional Officer in the instant matter, who tendered oral submissions in support of their cases besides reiterating their respective written submissions filed before us.

Discussions and Findings

16. We have gone through the entire case records including the facts of the case and submissions, written as well as oral, made by the Appellant as well as by the

respondent. The questions raised by the Appellant vide the advance ruling application filed before the advance ruling authority were pertaining to the applicability of GST on the Investment Advisory and Management services provided by the Appellant to the Domestic and Overseas Investors. In this regard, the AAR has held that the GST is leviable on the Investment Advisory and Management Fees collected from both the Domestic as well as the Overseas Investors, as the said services of Investment Advisory and Management services have been rendered to the AIF (Alternate Investment Fund), and not to the Domestic or Overseas Investors, as the case may be. The Advance Ruling Authority concluded that since the AIF is constituted in India i.e. the taxable territory, and the said supply of Investment Advisory and Management services, made to this entity will be subject to GST. Aggrieved by this order issued by the AAR, the Appellant has filed the instant appeal and has specifically sought the ruling with regard to the Investment Advisory and Management Fees, collected from the Overseas Investors for the services rendered by them.

17. Now, before setting out to discuss the merits of the impugned AAR order, we would like to ascertain as to whether we have the legal jurisdiction in the CGST Act to decide this issue of taxability on the said Investment Advisory and Management Fees, collected from both the Domestic as well as the Overseas Investors, as the case may be. To ascertain this issue, we would like to revisit the provisions laid out in this regard in the CGST Act, 2017. Section 97(2) of the CGST Act, 2017, which deals with the specific and exhaustive set of questions, in respect of which the advance ruling can be sought under this act, is being reproduced herein under:

Section 97

"(2) The question on which the advance ruling is sought under this Act, shall be in respect of,-

(a) Classification of any goods or services or both under the Act;

(b) Applicability of a notification issued under the provisions of the Act;

(c) Determination of time and value of the goods or service or both;

(d) Admissibility of input tax credit of tax paid or deemed to have been paid;

(e)Determination of the liability to pay tax on any goods or services or both;

(f)Whether the applicant is required to be registered under GST;

(g)Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

18. Now, to decide the taxability of the above said Investment Advisory and Management Fees, it is imperative to determine the place of supply in respect of the impugned overseas transactions. Further, on perusal of the provisions under Section 97(2), reproduced herein above, it is adequately clear that question on determination of the 'place of supply' has been excluded from the above mentioned specific and exhaustive set of questions, in respect of which advance ruling can be sought under the CGST Act. This clearly indicates that we cannot pass any ruling in respect of the question which involves the determination of the place of supply of the goods or services or both.

19. In view of the above rationale, it can decisively be concluded that the question posed by the Appellant i.e. whether the GST is applicable on the Investment Advisory and Management Fees collected from the overseas Investors, is beyond

the jurisdiction of the Advance Ruling, and hence cannot be decided by the Advance Ruling Authority. Accordingly, the Advance Ruling Authority should have refrained from passing any ruling over the above said questions raised by the Appellant. Since, the Advance Ruling Authority have passed the ruling in the instant case by transcending its jurisdiction, we set aside the impugned ruling passed by the Advance Ruling Authority and pass the order as under:

Order

We are of the opinion that since the questions asked by the Appellant are not covered under the jurisdiction of the advance ruling, no ruling can be passed in the instant case.

(RAJIV JALOTA)
MEMBER

(SUNGITA SHARMA)
MEMBER

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