Target-based incentives to attract 18% GST

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Mumbai: The Maharashtra bench of the GST-Appellate Authority for Advance Rulings (AAAR) has held that the incentive earned by the reseller, from a US entity, is not in the nature of a 'trade discount'. In other words, the reseller will have to bear a goods and services tax (GST) of 18% on such an incentive, which was based on attaining quarterly targets on eligible Intel products.

The US entity was selling goods through its distributors. The appellant — MEK Peripherals, a private company — purchased goods from these distributors for onward sale to retailers. It submitted to the AAAR that there is no bar under GST laws or under common law that the trade discount should flow from the immediate vendor only, as it can also flow directly from the original manufacturer (US entity).

The AAAR bench upheld the earlier ruling of the authority for advance rulings and on various grounds it held the incentive was not a trade discount. "The primary reason was that for incentives to qualify as a trade discount, an agreement between the seller (distributor) and the purchasing party (MEK Peripherals, the reseller) is a prerequisite. Here, the agreement was between the US manufacturer and the reseller," explained chartered accountant Sunil Gabhawalla.

The appellant also submitted that if it was not treated as a trade discount but a supply of services, it should qualify as an export of services. This was not upheld, as in view of the AAAR the place of supply — of the marketing services as a reseller — was in India.

'NOT TRADE DISCOUNT'

Gabhawalla added that the conclusion of the AAAR on the place of supply could indeed be challenged. Having said so, the facts of this case are not common as, typically, the incentive to the reseller flows from an Indian distributor. In which case, the reseller typically treads a cautious path and levies GST on the distributor, who in turn claims credit of the said tax.