MULTIPLES ALTERNATE ASSET MANAGEMENT PRIVATE LIMITED

Authority for Advance Ruling — Maharashtra

NO.GST-ARA-81/2018-19/B-25, Mumbai, dt. 06/03/2019 (order number an… Dated **06.03.2019**

Q Questions Before the Authority

- 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 applicant?
- 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 applicant?

F Facts

The applicant is an India-focused investment advisory firm that proposes to set up a Category II Alternative Investment Fund (AIF), a determinate contributory trust registered with SEBI, to pool money from domestic and overseas investors into Indian portfolio companies. After setting up the fund, the applicant would act as its Investment Manager, providing investment advisory and management services. It would invoice domestic contributors in Indian Rupees and overseas contributors in US Dollars for its fees, and overseas funds may also be routed through an offshore Investors Fund.

H Ruling

Advisory and management fees in Indian currency from domestic contributors located in India	**Answered in the affirmative: GST is applicable**	The Authority agreed that the services fall under Heading 997153 at 18% under Notification 11/2017-CGST (Rate). Place of supply is India under s.12(12) IGST Act, because the recipient is the AIF, not the contributors.
Advisory and management fees in foreign currency from overseas contributors located outside India	**Answered in the affirmative: GST is applicable**	The supply is not zero-rated and is not an export, because the recipient (the AIF) is located in India and the s.2(6) IGST condition is not met. The Authority did not accept that s.13 IGST applies, nor the officer's argument that s.13(8)(a) applies.

Both questions were answered in the affirmative , so GST applies to the fees from domestic contributors and to the fees from overseas contributors. The Authority held that the services are supplied to the AIF, which is a separate entity located in India, and not to the contributors, who only pay the fees. It also held that the overseas supply cannot be treated as an export or zero-rated supply because the recipient is not located outside India.

R Reasoning

The Authority held that the AIF is a separate legal entity from the applicant, and that the services are supplied to the AIF, even though the contributors pay the fees. It relied on the CGST definition of 'recipient' as the person

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

liable to pay the consideration, not the person who actually pays it. For domestic fees, it applied s.12(1) and s.12(12) of the IGST Act, since both supplier and recipient are in India. For overseas fees, it held that s.13 does not apply because the recipient is in India, so the supply is not an export under s.2(6) and cannot be zero-rated under s.16. The order does not decide the officer's reverse-charge contention under Notification 13/2017-Central Tax (Rate) on the overseas fees.

P Provisions Relied On

- Section 7 of the CGST Act, 2017 (definition of supply)
- Section 2(93) of the CGST Act, 2017 (definition of 'recipient')
- Section 12(1) and 12(12) of the IGST Act, 2017 (place of supply of banking and financial services)
- Section 13 of the IGST Act, 2017, including s.13(2) and s.13(8)(a) (place of supply, considered and held inapplicable)
- Section 2(6) of the IGST Act, 2017 (export of services)
- Section 16 of the IGST Act, 2017 (zero-rated supply)
- Notification 11/2017-CGST (Rate), dated 28.06.2017 (Heading 997153, 18%)
- Notification 13/2017-Central Tax (Rate), dated 28.06.2017 (reverse charge, raised by the officer and not decided)
- SEBI (Alternative Investment Funds) Regulations, 2012, Regulations 2(b), 2(q), 4(i), 9(1) and 10

! For the Practitioner

Fund managers charging advisory or management fees to AIF contributors can use this order to support GST on both domestic and overseas fees, with the AIF treated as the recipient of the supply. The order settles that overseas-contributor fees are not zero-rated exports where the AIF is located in India. It does not decide the reverse-charge question raised by the officer, the treatment of any offshore Investors Fund, or the fee quantum. As an advance ruling, it binds only the applicant and the period and facts it covers.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> ara_order_81_2018_maharashtra_maam.pdf

Prepared 31-10-2026.

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