

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, 8th floor, H-Wing, Mazgaon, Mumbai – 400010.

(Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri B. Timothy, Addl. Commissioner of Central Tax, (Member)

(2) Shri B. V. Borhade, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id	27AAGCM0997F1Z8
Legal Name of Applicant	MULTIPLES ALTERNATE ASSET MANAGEMENT PRIVATE LIMITED
Registered Address/Address provided while obtaining user id	701/A, Poonam Chambers, 'B' Wing, Dr. Annie Besant Road, Worli, Mumbai 400018
Details of application	GST-ARA, Application No. 81 Dated 27.09.2018
Concerned officer	Asstt. Commr. of CGST & C Ex., Division-VIII, Mumbai Central
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	Service provision
B Description (in brief)	The Applicant is proposing to setup a new Investment Vehicle - AIF Fund (explained later), where funds from various investors (both domestic and overseas) will be pooled in and invested in various portfolio companies in India.
Issue/s on which advance ruling required	(v) Determination of the liability to pay tax on any goods or services or both
Question(s) on which advance ruling is 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”] by MULTIPLES ALTERNATE ASSET MANAGEMENT PRIVATE LIMITED, the applicant, seeking an advance ruling in respect of the following questions.

- 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 applicant?*
- 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 applicant?*

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, for the purposes of this Advance Ruling, a reference to “GST Act” would mean CGST Act or MGST Act.

02. FACTS AND CONTENTION – AS PER THE APPLICANT

The **Applicant**", an India-focused investment advisory firm that currently advises and manages approx. USD 1 billion of Private Equity Funds with registered office at 701/A, Poonam Chambers, 'B' Wing, Dr. Annie Besant Road, Worli, Mumbai 400018, India and GSTIN 27AAGCM0997F128, in its capacity as Investment Manager has assisted in making 11 investments for 'Multiples Private Equity Fund' during the period 2011 to 2015 across various sectors including financial services, manufacturing, healthcare, media & entertainment, power exchange, etc. It has also assisted in making 9 investments for 'Multiples Private Equity Fund II LLP during the period 2015 to 2018 in sectors such as, BFSI, consumer, technology, healthcare and pharma. Their investment team primarily responsible for the Applicant's functioning comprises of seasoned private equity professionals who operate with an entrepreneurial mindset and have full cycle track record of investing, nurturing and exiting investments.

The Applicant is proposing to setup a new Investment Vehicle - AIF Fund, where funds from various investors, both domestic and overseas will be pooled in and invested in various portfolio companies in India in accordance with the AIF Regulations. The Proposed **AIF Fund** is set-up in India as a determinate, contributory trust and is proposed to be registered with the Securities and Exchange Board of India ("SEBI") as a Category II Alternative Investment Fund ("AIF") under the SEBI (Alternative Investment Funds) Regulations, 2012 ("**AIF Regulations**").

They are also incorporating an Investors Fund to be registered outside India to source funds from Overseas Contributors for pooling into the AIF Fund. The Domestic Contributors pool their funds directly into the AIF Fund and the Overseas Contributors have the option to pool their funds into the AIF Fund either directly into the AIF Fund or through the Investors Fund located outside India.

Before setting up of the fund, the Applicant undertakes "**FUND RAISING**" activities which include the following functions -

- The Applicant undertakes detailed discussions with the lawyers and tax consultants to prepare a fund structure which will be compliant with all applicable regulations.
- Based on the structure, the Applicant prepares the "Private Placement memorandum (PPM)" and Fund constitutive documents
- These documents are thereafter submitted to the relevant regulatory authorities for approval. The licenses and certificates for conducting the activities of these investment vehicles is obtained.
- The Applicant thereafter approaches various investors to explain the investment opportunity and obtain commitments from them to invest into the Fund.
- Few institutional investors may also conduct detailed due diligence on the investment team, processes, policies, systems, service providers, etc. of the Applicant, before providing their commitments.
- The Applicant does KYC / AML checks on all investors before their commitments are accepted into the Fund.



After Setting up of the Fund, the Applicant is appointed as the Investment Manager of the AIF Fund, for the primary purpose of advising, managing and administering the Fund Assets by providing professional advice and investment management related services for operation and management of the AIF Fund. With regard to the Contributor's Funds pooled into the AIF Fund, the Applicant renders the various services which is summarized below –

- a. Advising on Investment Strategies.
- b. Identifying and evaluating Investment opportunities across various sectors.
- c. Due Diligence of the investment opportunities.
- d. Negotiating terms of Investments and Making Investment decisions.
- e. Continuous Monitoring of Portfolio Companies where the funds are invested.
- f. Making Divestment decisions for the Portfolio companies at the appropriate time and price.
- g. Preparing the communications for the contributors on a quarterly basis; providing updates on the business & financial performance of portfolio companies.
- h. Realizing, exchanging or distributing Portfolio Investments which will include the purchase, subscription, acquisition, sale & disposal of Portfolio Investments, with the principal objective of providing the Investors with high returns.
- i. Managing Day-to-Day operations of the AIF Fund.
- j. Ensuring Necessary Compliances of the AIF Fund and submission of periodic/ quarterly compliance reports.

For the aforesaid Investment Advisory & Management Services rendered, the Applicant will raise invoices at regular intervals for Advisory & Management Fee on Domestic Contributors in Indian Currency and the Invoice on Overseas Contributors in US Dollars which will be paid by the Contributors as per the invoice and accordingly, convertible foreign exchange and Indian Rupees shall be received from the Overseas Contributors and Domestic Contributors respectively.

The applicant has submitted that (i) Such Investment Advisory & Management Services provided falls under the definition of Supply as per Sec 7 of the CGST Act, 2017 and is classified under Heading 997153 as per Notification 11/2017-CGST (Rate) dated 28th June 2017 with a GST Rate of 18% and the Domestic/Overseas Contributors are liable to make payment to the Applicant for the Advisory & Management Services provided by the Applicant and as per the definition of 'recipient' in the GST Laws, the Recipients are the Domestic and the Overseas Contributors.

In respect of the Advisory & Management Fees received from Domestic Contributors, the applicant has submitted that the Location of the Recipient and Supplier, is India and therefore liable for GST.

In respect of Advisory & Management Fees received from Overseas Contributors the Location of the Recipient is located outside India. Thus, the place of Supply is to be determined by applying Sec 13 of the IGST Act, 2017. Their services of Investment Advisory & Management Services falls under Sec 13(2) and does not fall under the services specified in sub-sections (3) to (12) of Sec 13 of

IGST Act, 2017 and therefore the Place of Supply is the Location of such Overseas Contributors as per Sec 13(2) of the IGST Act, 2017 which is outside India.

In their case, The Applicant (Service Provider) is located in India; The Overseas Contributors (Recipient) are located outside India; As Per Sec 13(2) of the IGST Act the place of supply of service is outside India; Consideration received in convertible foreign exchange and the Supplier and Recipient are distinct Persons. Hence the Advisory & Management Fees received from Overseas Contributors will be treated as 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.

The applicant also made Additional submissions on 18.01.2019 wherein they reiterated their earlier submissions and further have mentioned that: The Applicant does the fund-raising activity by approaching various Overseas Investors, explaining them the Investment Opportunity in India and the Indian growth story, post which, if the Overseas Investor is convinced to invest in India, he will provide his Commitment ; The Funds belong to the Overseas Contributor and the Applicant is responsible to the Overseas Contributor for obtaining such return on the Investment for which the Applicant prepares communications for the contributors on a quarterly basis; providing updates on the business & financial performance of portfolio companies ; The AIF, setup by the Applicant has no Employees and no Infrastructure. It is just an Investment Vehicle setup to satisfy SEBI requirements to pool in the funds of the Contributors and does not retain any profits. All Profits are paid back to the Contributors as Return on Investment ; only the Overseas Contributors are liable to make payment of Advisory & Management Fee to the Applicant on Principle to Principle Basis ; the Overseas Contributors are the Recipient of Service as they are the beneficiaries and are liable to make payment to the Applicant.

The applicant has also submitted arguments to state that the Intermediary Definition is not applicable in the instant case as the Applicant provides services on Principle to Principle Basis and that the provisions of Sec 13(8)(a) is not applicable in the instant case.

03. CONTENTION – AS PER THE CONCERNED OFFICER

The jurisdictional office has submitted that the Investment Advisory & Management Services provided by the Applicant is classifiable under Heading No.997153 – Financial and Related Services – Portfolio Management Services except Pension Fund and GST is payable @18% in terms of Not. No. 11/2017-CGST (Rate) dated 28-6-2017.

The Fees received for providing Investment Advisory & Management Services to the Domestic Contributors, are liable to GST.

1. As regards the Investment Advisory & Management Services provided by the Applicant to the Overseas Contributors, the Applicant has contended that;

In the instant case, the services to the Overseas Contributors are provided in India and the place of “supply of services” is in India and therefore services provided by the applicant to the Overseas Contributors cannot be treated as “Export of Services”. Further, the services “Investment Advisory & Management Services”, provided/supplied to the Overseas Contributors, distinctly fall under Sec.13(8)(a) of the IGST Act, 2017 Hence the said services cannot be treated as Zero Rated Supply as per Sec.16 of IGST Act, 2017. Hence the Applicant has to discharge the GST liability under Reverse Charge

Mechanism, in terms of the Not. No.13/2017-Central Tax (Rate) dated 28-6-2017, in respect of the services provided/supplied to Overseas Contributors, in India.

04. HEARING

The Preliminary hearing in the matter was held on 05.12.2018, Sh. Satish S and Sh. Akshay Arvind of D Arvind Associates LLP appeared and requested for admission of application as per details in their application. Jurisdictional Officer Sh. L. K. Meena, Asstt. Commr., CGST & CX, Divn – VIII, Mumbai Central appeared & stated that they would making submissions in due course.

The application was admitted and called for final hearing on 19.12.2018. The applicant requested for adjournment of the case and as requested, the hearing was adjourned to 10.01.2019 when Sh. Satish S, Sh. Akshay Arvind and Sh. D Arvind appeared and made oral and written submissions. Jurisdictional Officer Sh. Vivek Anand, Asstt. Commr. of CGST & CX, Divn–VIII, Mumbai Central also appeared and made written submissions.

05. OBSERVATIONS

We have gone through the facts of the case, documents on record and submissions made by both, the applicant as well as the jurisdictional office.

We find that as per Section 2 (b) of the SEBI (Alternative Investment Fund)Regulations, 2012 (AIF Regulations) an Alternative Investment Fund (AIF) 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 is a privately pooled investment vehicle and which collects funds from sophisticated investors, whether Indian or foreign, for investing it in accordance with a defined investment policy for the benefit of its investors. Thus we find that the AIF has the following characteristics:-

- (i) AIF means any fund **established or incorporated in India.**
- (ii) AIF is a privately pooled investment vehicle which **collects funds from investors, whether Indian or foreign**, for investing it in accordance with a defined investment policy.
- (iii) The defined investment policy is for the benefit of its investors.

We shall now discuss features of AIFs in brief. Alternative investments, are alternate to traditional form of investments and deals with financial assets such as private equity, hedge funds, venture capital, etc. AIFs are an important source of diversification and long-term capital for start-ups and other companies in India. AIFs are regulated under AIF Regulations introduced on May 21st, 2012. AIFs does not include funds covered under the SEBI (Mutual Funds) Regulations, 1996, SEBI (Collective Investment Schemes) Regulations, 1999 or any other regulations of the Board to regulate fund management activities. An AIF can be established or incorporated in the form of a trust or a company or a limited liability partnership or a body corporate in India and as per Regulation No 3 (4) of the AIF Regulations, an AIF can be of 3 types, namely, Category I, II, or III.

Category (I) AIF is a fund which invests in start-up or early stage ventures or social ventures or SMEs or infrastructure or other sectors or areas which the government or regulators consider as socially or economically desirable and shall include venture capital funds, SME Funds, social venture funds, infrastructure funds and such other AIFs as may be specified.

Category (II) AIF is a fund which does not fall in Category I and III and which does not undertake leverage or borrowing other than to meet day-to-day operational requirements and as permitted in these regulations. These are funds for which no specific incentives or concessions are given by the government or any other Regulator; and which shall include Private Equity Funds, Debt Funds, Fund of Funds and such other funds that are not classified as Category I or III. These funds shall be close ended, shall not engage in leverage and have no other investment restrictions.

Category (III) AIF is a fund which employs diverse or complex trading strategies and may employ leverage including through investment in listed or unlisted derivatives.

The most important feature on an AIF is that they cannot solicit or collect funds except by way of private placement by way of issue of information memorandum or placement memorandum and investment is open to both, domestic and foreign investors. As per Regulation No. 9. (1) of the AIF Regulations, all Alternative Investment Funds shall state investment strategy, investment purpose and its investment methodology in its placement memorandum to the investors. The placement memorandum, in addition to various information, should contain information about the AIF, the Manager and background of the investment team of the manager, targeted investors, fees and all other expenses proposed to be charged, tenure of the Alternative Investment Fund or scheme, conditions or limits on redemption, investment strategy, risk management tools and parameters employed, key service providers, conflict of interest and procedures to identify and address them, disciplinary history, the terms and conditions on which the Manager offers investment services, etc and such other information as may be necessary for the investor to take an informed decision on whether to invest in the Alternative Investment Fund.

A decision has to be taken on the optimum structure for the Fund and once a decision is taken on the optimum structure for the fund, the same has to be carefully incorporated in the fund documents including the charter documents for the fund entity, the private placement memorandum, the shareholders' agreement, the share subscription or contribution agreement, the investment management agreement, the investment advisory agreement, etc. The private placement memorandum should also achieve a balance between the risk disclosure requirements and the marketing strategy.

Under Regulation 2(q) of the AIF Regulations, a Manager has been defined as any person or entity who is appointed by the Alternative Investment Fund to manage its investments by whatever name called and may also be same as the sponsor of the Fund. In order to ensure that the interest of the Manager/Sponsor is aligned with the interest of the investors in the AIF, the AIF Regulations require that the sponsor/manager shall have a certain continuing interest (For Category II AIFs, such interest must be not less than two and half percent of the corpus or five crore rupees, whichever is lesser) in the AIF which shall not be through the waiver of management fees. The management fees is generally a minimum of 2.5% of the corpus invested in case of a Category II AIF to be deducted annually or quarterly.

We find, from the submissions made by the applicant **that the AIF Fund is to be set-up by them in India as a determinate, contributory trust** and is proposed to be registered with the Securities and Exchange Board of India ("SEBI") as a Category II AIF under the SEBI (Alternative Investment

Funds) Regulations, 2012 (“AIF Regulations”). This very clearly implies that the applicant and the AIF which is going to be set up by it are to be treated as two different entities, both operating from India.

As per the submissions made by them, the Applicant will be appointed as the Investment Manager of the AIF Fund, for the purpose of advising, managing and administering the Fund Assets by providing professional advice and investment management related services for operation and management of the fund. Their submissions reveal that the investors, both domestic and foreign will contribute directly to the Fund. The applicant has mentioned that before setting up of the fund, the Applicant undertakes “FUND RAISING” activities which includes preparation of the “Private Placement memorandum (PPM)” and Fund constitutive documents, approaching various investors to explain the investment opportunity and obtain commitments from them to invest into the Fund, etc.

With reference to classification and the rate of tax we agree with the applicant’s submission that the Investment Advisory & Management Services provided by the Applicant falls under the definition of Supply as per Sec 7 of the CGST Act, 2017 and is classifiable under Heading 997153 as per Notification 11/2017-CGST (Rate) dated 28th June 2017 with a GST Rate of 18%. However we do not agree with the applicant contention that they are providing service to the investors directly because from the submissions made by the applicant we find that they will in fact be advising and servicing the AIF based on which the AIF will take the investment or disinvestment decision on behalf of the investors who have pooled in their money.

As per Regulation No. 4(i) of the AIF Regulations, the AIF Fund should clearly describe, at the time of registration the investment objective, the targeted investors, proposed corpus, investment style or strategy and proposed tenure of the fund. Thus it is clearly seen that the investors are targeted by the AIF and subsequently on receiving contribution from the investors, the AIF shall invest the contributions on the advice given by the applicant.

As per Regulation 10 of the AIF Regulations, investment in all categories of Alternative Investment Funds shall be subject to the following conditions:-

(a) the Alternative Investment Fund may raise funds from any investor whether Indian, foreign or non-resident Indians by way of issue of units;

(b) each scheme of the Alternative Investment Fund shall have corpus of atleast twenty crore rupees;

(c) the Alternative Investment Fund shall not accept from an investor, an investment of value less than one crore rupees:

Provided that in case of investors who are employees or directors of the Alternative Investment Fund or employees or directors of the Manager, the minimum value of investment shall be twenty five lakh rupees.

(d) the Manager or Sponsor shall have a continuing interest in the Alternative Investment Fund of not less than two and half percent of the corpus or five crore rupees, whichever is lower, in the form of investment in the Alternative Investment Fund and such interest shall not be through the waiver of management fees:

Provided that for Category III Alternative Investment Fund, the continuing interest shall be not less than five percent of the corpus or ten crore rupees, whichever is lower.

(e) the Manager or Sponsor shall disclose their investment in the Alternative Investment Fund to the investors of the Alternative Investment Fund;

(f) no scheme of the Alternative Investment Fund shall have more than one thousand investors;

(g) the fund shall not solicit or collect funds except by way of private placement.

We find that the applicant and the AIF are separate entities and that the services rendered to the investors, if any would be by the Fund. From the submissions made by the applicant, we find that the services mentioned by them are supplied to the AIF. However they have submitted that for such service rendered by them, they receive a certain amount of fees from the investors of AIF to whom invoices are raised by the applicant. It is very clear from the AIF Regulations that the Fund has to approach investors with a placement memorandum against which they may receive investments/contributions To invest these contributions in the markets the Funs uses the services of the Manager, in this case the applicant, who advises the Fund on the strategies of investment, time of divestment, etc. We find that the applicant , even when they are providing services to the Fund by which of investment advice are billing their fees to the investors which is not proper in the normal course of business. Just because they are going to receive fees from the investors does not mean that the supply of service is made to the investors. The facts enumerated by the applicant clearly shows that their supply of services is to the AIF which is a different entity.

The applicant has relied on the definition of recipient u/r 2 (93) of the GST Act which says that recipient of service is the one who is liable to pay the consideration which is reproduced below:-

“recipient” of supply of goods or services or both, means—

- (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
- (b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; or
- (c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;”

From the definition, it is very clear that a recipient means a person who is liable to pay the consideration and not a person who has paid it. Usually we see that a person who receives goods or services is liable to pay consideration. In this case, services are provided to the AIF which is a separate entity and which is liable to pay the consideration for such services received but the consideration is paid by the foreign investor on behalf of the AIF. The definition of the word ‘recipient’ clearly mentions that a recipient is the one who is liable to pay for services received. ‘Person liable to pay’ cannot be equated with ‘Person who has paid’. The receipt of fees by the applicant from the investors is probably an



internal arrangement which cannot be used to say that services have been rendered to the investors. IN any normal course of business it is the recipient of services who pays tax.

In light of the above findings, we now address the questions raised by the applicant as follows:-

QUESTION NO. 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 applicant?

The advisory and management fees received by the applicant are for financial services rendered to the AIF as mentioned above. Since the location of both, the applicant and the AIF are in India, the place of Supply is to be determined by applying Sec 12 of the IGST Act, 2017 which is reproduced as under -

"12 (1) The provisions of this Section shall apply to determine the place of supply of services where the location of the supplier of services and the location of the recipient of services is in India.

The applicant in the subject case is supplying financial services to the AIF and such services are covered under Section 12 (12) of the IGST Act, 2017 which is reproduced as under:-

"12 (12) The place of supply of banking and other financial services, including stock broking services to any person shall be the location of the recipient of services on the records of the supplier of services:

Provided that if the location of the recipient of services is not on the records of the supplier, the place of supply shall be the location of the supplier of services.

It is very clear that both, the applicant and the AIF are in taxable territory and the services rendered by the applicant to the AIF are taxable and therefore GST is payable, by application of the provisions of Section 12 (12) of the IGST Act, 2017..

QUESTION NO. 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 applicant?

As discussed above, the Advisory and management Services are provided to the AIF, which is a separate legal entity which makes investment decisions on the advice of the applicant and therefore sub-section 12 of Section 12 of IGST Act, 2017 will apply in this case also as both supplier and the recipient of service are located in India. For the same reason, we do not agree with the applicant's contention that the transaction with foreign investors should be determined in terms of Section 13 of the IGST Act, 2017 because the recipient of service i.e. AIF is not located outside India and the applicant are not providing any services to the Overseas Contributors.

The transaction also do not qualify to be an export of service as the condition specified in sub-clause (ii) of Sub-section (6) of Section 2 of IGST Act,2017 that recipient of service should be outside India, is not satisfied, and therefore it is not a zero rated supply.

We also do not agree with the concerned officer's submission that the applicant should be treated as a financial institution which distinctly falls under Sec. 13(8)(a) of the IGST Act, 2017 because

no deposits are made with the applicant. The funds of investors are received directly by the AIF which is a separate legal entity.

05. In view of the extensive deliberations 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)

NO.GST-ARA- 81/2018-19/B- 25 Mumbai, dt. 06/03/2019

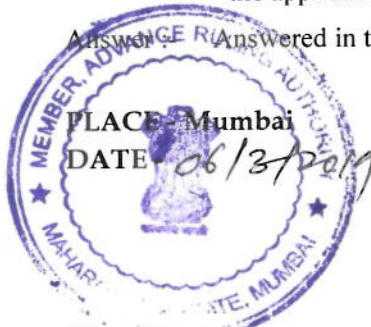
For reasons as discussed in the body of the order, the questions are answered thus –

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 applicant?

Answer :- Answered in the affirmative.

Question2:- 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?

Answer :- Answered in the affirmative.



—sd—
B. TIMOTHY
(MEMBER)

—sd—
B. V. BORHADE
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai
5. Joint commissioner of State Tax , Mahavikas for Website.

CERTIFIED TRUE COPY


MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai – 400021.