

ITC ineligible on CSR activities - Gujarat AAR

5 October 2021



Summary

The Gujarat Authority for Advance Ruling (AAR), in the present case, has held that the ITC is available only on supply of goods or services which are used or intended to be used in the course or furtherance of business. Since, the corporate social responsibility (CSR) does not include activities undertaken in pursuance of normal course of business of the company, the applicant is not eligible for Input Tax Credit (ITC) as per the GST¹ Law.

Facts of the case and applicant's contention

- The applicant² supplies insecticides, fungicides and herbicides. It has been spending the mandatory amount on CSR activities such as donation to government relief funds/educational societies, civil works in school or hospitals, distribution of food kits, etc.
- The applicant sought advance ruling as to whether the inputs and input services procured in order to undertake mandatory CSR activities qualify as being in the course or furtherance of business and whether will it be considered as eligible ITC in terms of Section 16 of the CGST Act.
- The applicant placed reliance on certain judgements³ wherein it was held that CSR activities are mandatory and essential for smooth business operations of a company. It submitted that CSR expenses are incurred in course and furtherance of the business and

the ITC pertaining to such expenses must be allowed as per the GST Act.

- The applicant contended that ITC on inputs procured for the purpose of donating must constitute as eligible ITC so that company will have more funds at its' disposal enabling it to contribute more towards the social cause.

Gujarat AAR observations and ruling⁴:

- **CSR activities not in course or furtherance of business:** The provisions of the rules state that CSR activities are undertaken in pursuance of its statutory obligation and does not include those undertaken in normal course of business. The CSR activities performed by applicant are not undertaken in pursuance of applicant's normal course of business.
- **CSR activities barred from input/input service:** The provisions of the GST Act state that a person is entitled to claim ITC on supply of goods or services or both that are

¹ Section 16(1) of the CGST Act, 2017

² M/s. Adama India private limited

³ Essel Propack vs. Commissioner of CGST, Bhiwandi [2018(362) ELT 833 (Tri-Mum)]
Commr. Of CEX, Bangalore, vs. Millipore India pvt.ltd. 2012[26]STR.514(Kar.)

⁴ GUJ/GAAR/R/44/2021

used or intended to be used in the course or furtherance of business. Thus, as the CSR activities are not in normal course of business, accordingly it will not be eligible to claim ITC.

- **Cases cited are irrelevant:** The case laws cited by applicant pertain to pre-GST era and are not pertaining to GST scheme of law. It is held that decision of Uttar Pradesh AAR shall be binding only on the applicant who had sought and the concerned officer or the jurisdictional officer in respect of the applicant.

Our comments

The present ruling is in sharp contrast to the ruling pronounced by the Uttar Pradesh advance ruling authorities⁵ wherein the authorities had allowed the ITC on expenses incurred to comply with the requirements of CSR under the Companies Act, 2013.

At this juncture, it is imperative to note that similar to Gujarat AAR, even the Kerala AAR had disallowed ITC on CSR expenditure.

This is another classic case of deviating interpretations on the same matter by two different advance ruling authorities. Such divergent views create ambiguity and unwarranted litigations.

⁵ in the matter of Dwarikesh Sugar Industries Limited

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