

ITC ineligible on CSR activities being excluded from normal course of business

The AAR, Gujarat in the matter of *M/S. Adama India Private Limited [Advance Ruling No. GUJ/GAAR/R/44/2021 dated August 11, 2021]* held that, no Input Tax Credit (“ITC”) would be available for Corporate Social Responsibility (“CSR”) activities excluded from normal course of business.

Facts:

M/s. Adama India Private Limited (“**the Applicant**”), supplies insecticides, fungicides and herbicides. The Applicant has been spending the mandatory amount on CSR activities in the form of donations to the Government relief funds/educational societies, civil works or installation of plant and machinery items in schools or hospitals, distribution of food kits etc. Further, the vendors that supply goods/services to the Applicant for the purpose of undertaking the CSR activities charge GST on their output supplies.

Issue:

Whether ITC would be available of the inputs and input services procured for the purpose of undertaking the CSR activities?

Held:

The AAR, Gujarat in *Advance Ruling No. GUJ/GAAR/R/44/2021 dated August 11, 2021* held as under:

- Analysed Rule 2(d) and Rule 4(1) of the Companies (CSR Policy) Rules, 2014 (“**the CSR Rules**”) and noted that the definition of CSR, itself, excluded activities undertaken in pursuance of normal course of business of the company.
- Observed that, the CSR activities undertaken by the company shall exclude activities undertaken in pursuance of its normal course of business and it does not include activities undertaken in pursuance of normal course of business of the company.
- Stated that, a registered person is entitled to take ITC charged on any supply of goods or services or both, which are used or intended to be used in the course or furtherance of his business.
- Held that, the CSR activities are not activities undertaken in pursuance of Applicant’s normal course of business and Section 16(1) of the Central Goods and Services Tax Act, 2017 (“**CGST Act**”) bars CSR activities from input/input service and therefore not eligible for ITC.

Our comments:

It is to be noted that the companies are statutorily obligated under Section 135(5) of the Companies Act, 2013 ("**Companies Act**") to undertake CSR expenditure every Financial Year ("**FY**") and non-compliance of these provisions may lead to business disruptions.

As per the definition of term "business" under Section 2(17) of the CGST Act, the term business includes all activities which are **incidental / ancillary** to any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit.

Since the companies are statutorily obligated to undertake CSR activities in order to run its business, it becomes an essential part of business process as a whole. Therefore, the CSR activities are to be treated as incurred 'in the course or furtherance of business' and thus eligible for credit under Section 16(1) of the CGST Act.

Reliance can be placed on the case of ***M/S. Dwarikesh Sugar Industries Limited [Order No. 52, dated January 22, 2020]*** wherein AAR, Uttar Pradesh held that expenses incurred towards CSR by the Company in order to comply with requirements under the Companies Act qualify as being incurred in the course of business and therefore, eligible for ITC in terms of the Section 16 of the CGST Act.

Further, CSR activity is mandatory and regular in nature and the company doing CSR activity receives the confidence of stakeholders, public or society and maintain social position in corporate which forms consideration. Thus, GST ITC on CSR activity should be allowed as it is incurred in the course or furtherance of business.

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