

Input Tax Credit can be Availed on Corporate Social Responsibility Expenses

The Telangana AAR, in lieu of an application filed by *M/s. Bambino Pasta Food Industries Private Limited*, [TSAAR Order No.52/2022] ruled that Corporate Social Responsibility (“CSR”) expenditure for business is eligible for Input Tax Credit (“ITC”).

Facts:

M/s. Bambino Pasta Food Industries Private Limited, (“**the Applicant**”) is the manufacturer of Vermicelli and Pasta Products. The Applicant filed for advance ruling application to know the admissibility of ITC on the CSR expenditure incurred by it.

During COVID-19 Pandemic, the Applicant donated oxygen plant to AIIMS hospital Bibinagar, Yadadri Bhongir District, for the benefit of patients who were suffering with low oxygen levels. For the aforementioned purpose, the applicant purchased PSA oxygen plant and spare parts for that oxygen plant for Rs. 62,74,200 inclusive of the Integrated Goods and Services Tax (“**IGST**”) worth Rs 9,16,200/-.

The Applicant was of the opinion that the expenditure incurred by it in purchasing the oxygen plant and its spare parts amounts to CSR activity under Section 135 of the Companies Act, 2013 (“**the Companies Act**”) and is eligible for claiming ITC on the said CSR activity.

Issue:

Whether ITC is available on CSR expenditure incurred by the company?

Held:

The Telangana AAR held as under:

According to Section 135 of the Companies Act, a company with a specified net worth failed to incur a minimum of 2% of their net profit towards CSR, the same will attract penalty under Section 135(7) of the Companies Act, which may go upto Rs. 1 Crore. Thus, running of the business of a company will be substantially impaired if they do not incur said expenditure. Therefore, the expenditure incurred for CSR is an expenditure made in the furtherance of the business. Hence, the taxes paid to meet the obligation under Section 135 of the Companies Act, shall be eligible for ITC under the Central Goods and Services Taxes (“CGST”) and the State Goods and Services Taxes Acts (“SGST”).

Relevant Provisions:

Section 16(1) of the CGST Act, 2017

16. (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

Section 135 of Companies Act, 2013

“Sub-Sec (1). Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more in the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director”...

Sub-Sec (5) The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial year, or where the

company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.

Sub-Sec (6) Any amount remaining unspent under sub-section (5), pursuant to any ongoing project, fulfilling such conditions as may be prescribed, undertaken by a company in pursuance of its Corporate Social Responsibility Policy, shall be transferred by the company within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year.

Sub-Sec (7) If a company is in default in complying with the provisions of sub-section (5) or sub-section (6), the company shall be liable to a penalty of twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or one crore rupees, whichever is less, and every officer of the company who is in default shall be liable to a penalty of one-tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or two lakh rupees, whichever is less.

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