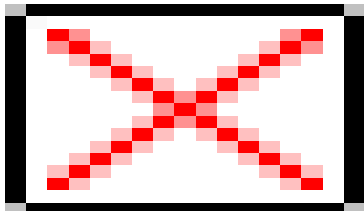


Eligibility of credit on CSR activities

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THIS

is a question plaguing the industry at large and has been subject to much discourse under the GST regime. There is little doubt that performing activities in relation to Corporate Social Responsibility is mandatory for all the companies who meet the criteria prescribed under Section 135(1) of Companies [Act, 2013](#)

. As per Rule 2(c) of Companies (Corporate Social Responsibility) Rules, 2014, Corporate Social Responsibility (CSR) means and includes but is not limited to activities specified in Schedule VII to the Act and activities declared under the CSR policy of the company subject to the condition that such policy will cover subjects enumerated in Schedule VII of the Act.

Whether in the erstwhile regime or under GST, the question of taking input tax credit in respect of inputs or input services received by a company for the purpose of performing activities relating to CSR has always been an area of debate. This issue came up recently before the Uttar Pradesh Advance Ruling Authority in the case of *M/s Dwarikesh Sugar Industries Ltd* [[2020-TIOL-305-AAR-GST](#)]. The Authority ruled in favour of the applicants, holding that CSR expenditure incurred pursuant to the mandate under the Companies Act, 2013 is in the course of business and input tax credit can be taken by virtue of Section 16(1) of the CGST Act.

Judicial Precedents under Erstwhile Regime

While answering the question of whether CSR activity is ***"used or intended to be used in the course or furtherance of business"***, the Advance Ruling Authority placed reliance on the case of *Essel Propack Ltd vs Commissioner of CGST, Bhiwandi* - [2018-TIOL-3257-CESTAT-MUM](#)

. The Tribunal observed that CSR can be considered as an input service and will be included with the definition of ***"activities relating to business"***

. It was reasoned that the sustainability of a company is dependent on CSR without which companies cannot operate smoothly for long period as they are dependent on various stakeholders to conduct business in economically, socially and environmentally sustainable manner. Further, Tribunal also observed that

"CSR which was a mandatory requirement for the public sector undertakings, has been made obligatory also for the private sector and unless the same is to be treated as input service in respect of activities relating to business, production and sustainability of the company itself would be at stake"

Further, the authorities also relied on the decision pronounced by Karnataka High Court in the case of *M/s Commissioner of Central Excise, Bangalore Vs Millipore India (P)Ltd.* [CEA No. 84 of 2009 dated 11 April 2011]. The court was concerned with credit on account of landscaping of factory garden and held that the said service is an activity relating to business of the manufacturer of excisable goods. While discussing the broad scope of the definition of input services, observed that ***"now the concept of corporate social responsibility is also relevant. It is to discharge a statutory obligation, when the employer spends money to maintain their factory premises in an eco-friendly manner, certainly, the tax paid on such services would form part of the costs of the final products"***. Accordingly, credit was allowed to the assessee by the Court in this instance.

In view of these cases decided during erstwhile regime, the Advance Ruling Authority has ruled that since, the applicant is statutorily obligated to undertake CSR activities to run its business, the CSR activities are, therefore, required to be treated as in the course of business.

Restriction under Section 17(5) of CGST for taking input tax credit in respect of CSR activities undertaken by a Company

The GST regime provides for eligibility for availing input tax credit under Section 16 of the CGST Act and thereafter, it still needs to be seen whether the credit is restricted under Section 17 of the CGST Act, which is notwithstanding anything contained in Section 16. Sub-section (5) of Section 17 in particular provides for various restrictions which will apply, even if any inputs or input services are used in the course or furtherance of business of the taxpayer.

The Advance Ruling Authority in the aforementioned ruling also considered whether the goods supplied free of cost as a CSR activity can be considered as **"gift"**

under Section 17(5)(h) of CGST Act, which specifically restricts input tax credit in respect of goods disposed of by way of gifts. Here, it was held that a clear distinction needs to be drawn between goods given as gifts and those provided/ supplied as a part of CSR activities. Whereas the former is voluntary and occasional, the latter is obligatory and regular in nature. Thus, it was ruled that since CSR activities are not voluntary in nature it would not qualify as gifts and hence, would not get restricted under Section 17(5)(h) of CGST Act.

However, it has to be kept in mind that the mandate under the Companies law is to undertake CSR activity. There is no statutory mandate that goods be given free of cost to do the same. Thus, the above distinction does not stand of a firm footing.

Notably, the Kerala Advance Ruling Authority has taken a different view in the case of ***Polycab Wires Private Limited*** - [2019-TIOL-107-AAR-GST](#)

where in it was ruled that input tax credit is restricted under Section 17(5)(h) of CGST Act in respect of electrical items (such as switches, fan, cables, etc.) distributed free of cost to Kerala flood affected people.

Presently, contrary views have been taken by the Uttar Pradesh Authority and the Kerala Authority viz. availability of input tax credit in respect of goods given free of cost account of CSR activities. Albeit, advance rulings are binding only to that respective applicant, but the same are known to give impetus to authorities in other jurisdiction to raise disputes. Further, such contradictory views have created confusion in the minds of the registered person whether to take or not to take input tax credit in respect of procurements made for such CSR activities.

Another question which also arises is whether the decisions pronounced during the erstwhile CENVAT credit regime shall be applicable under the GST regime, in light of the difference in the provisions. Although, it is notable that the scope of the credit provisions under GST regime is wider than that of the previous regime. Even if one is to rely on the past jurisprudence and the Uttar Pradesh advance ruling to take the stand that CSR activities are in the course or furtherance of business under Section 16(1), the hurdle of Section 17(5) is not an easy one to cross. A clarification by the GST Council will go a long way to ease the confusion in the industry.

[The views expressed are strictly personal.]

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