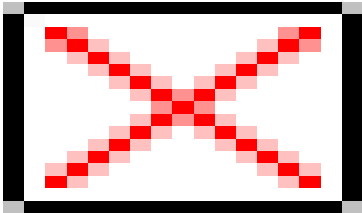


CSR Expense & ITC under GST

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BUSINESS

organisations while carrying out their operations consume resources of the society for which it is socially responsible. Corporate social responsibility (CSR) aims to contribute to society by engaging in or supporting volunteering or ethically oriented practices. Earlier, CSR was only described as an internal policy or corporate ethic strategy. However, in modern times, various national and international laws have been passed mandating companies to take up CSR activities. CSR not only contributes to the social good but also enhances the reputation of the company in the eyes of its stakeholders.

India was the first country to legally mandate the CSR expenditure in 2013 wherein section 135 was introduced in the Companies Act, 2013 (Companies Act) which mandated the CSR expenditure from financial year (FY) 2014 -15 onwards.

As per the provisions of section 135 of the Companies Act, every company on fulfilment of below conditions needs to spend at least 2% of the average net profits made during the three immediately preceding FYs, in pursuance of its CSR policy.

- Net worth of INR 500 crore or more; or
- Turnover of INR 1000 crore or more; or
- Net profit of INR 5 crore or more.

The activities to be undertaken by the company as part of companies CSR policy should be in accordance with the provisions 1 of the Companies Act.

GST Implications

The tax charged by a person registered under Goods and Services Tax (GST) for the outward supply of goods or services or both, is an 'input tax' ² for the corresponding buyer. The question lies is with eligibility of Input Tax Credit on goods and services procured for carrying out CSR activities, which is mandated by the Companies Act, 2013.

Let's have a brief meaning and relevance of relevant terms in GST:

Business

The meaning of 'business' ³

under the GST law is very broad which prima facie includes any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit.

Input Tax

The input tax charged by the supplier can be utilised by the recipient for payment of its final output liability, based on its eligibility and fulfilment of prescribed conditions. The fundamental condition to avail credit of input tax charged is, that it is or is intended to be used in the course or furtherance of the business. Further, the GST law specifically restricts the 'input tax credit' ⁴

(ITC) in certain cases under the umbrella of 'blocked credit' ⁵

which includes ITC in relation to goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.

Given the above background, the moot question that lies in determining the eligibility of CSR expenses is whether they are considered as gifts or are considered in relation to business or for furtherance of the business.

The Uttar Pradesh Authority for Advance Ruling (AAR) ⁶

had touched upon both the above-mentioned issues based on the following observation:

Gifts

-Â The question which arises is whether the free of cost goods supplied would be treated as gift thereby ineligible for ITC;

-Â 'Gift' is not defined under the GST Act, but in general parlance it is provided occasionally without consideration and is voluntary in nature. Thus, the authorities distinguished between CSR activities and gift, holding that former is voluntary and occasional, and later is obligatory and regular in nature.

-Â As the CSR activities are not incurred voluntarily but are obligatory in nature, the same do not qualify as 'gifts'.

Business use

-Â The company that meets the criteria for CSR, is mandatorily required to incur CSR activities to be compliant with the Companies Act.

-Â Further, the non-compliance of the provisions may lead to business disruptions and penal fees;

-Â In order to run the business without disruption, CSR activities become an essential part of the business and hence is to be treated as incurred **"in the course of business"**

The above view is in line with that of the Mumbai Tribunal ⁷

wherein CENVAT in relation to CSR activities was allowed considering that companies cannot sustain and operate smoothly without such CSR activities.

Further, the Karnataka HC ⁸

had held that CSR is a statutory obligation wherein the employer spends money to maintain their factory premises in an eco-friendly manner and certainly the tax paid on such services would form part of the costs of the final products. In those circumstances, the tribunal was right in holding that the service tax paid in all these cases would fall within the input services and the assessee is entitled to the benefit thereof.

On the contrary, the Kerala Advance Ruling Authority (AAR) ⁹

provided the opposite ruling. It held that electrical items distributed free of cost to flood affected people under CSR shall not be eligible for availing ITC. Thus, ITC related to procurement of goods or services for CSR expenses was not considered 'in course of furtherance of business'.

The above-mentioned decisions of the advance ruling authorities are applicable only to the individual taxpayers, however suitable clarity from the government would avoid unwarranted litigations. However, in view of the current Covid-19 pandemic, considering that many taxpayers are contributing their penny for the social cause, the Government may consider providing larger clarity.

[The views expressed are strictly personal.]

- 1 Schedule VII of Companies **Act, 2013**
- 2 Section 2(62) of the CGST [Act, 2017](#)
- 3 Section 2(17) of the CGST Act, 2017
- 4 Section 2(63) of the CGST Act, 2017
- 5 Section 17(5) of the CGST Act, 2017
- 6 M/s Dwarikesh Sugar Industries Limited - [2020-TIOL-305-AAR-GST](#)
- 7 Essel Propack v. Commissioner [2018-TIOL-3257-CESTAT-MUM](#)
- 8 Millipore India Pvt. Ltd - CEA No. 84 of 2009 dated April 11, 2011
- 9 M/s Polycab Wires Private Limited - [2019-TIOL-107-AAR-GST](#)

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