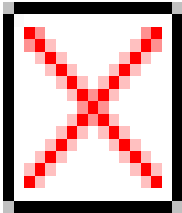


Disallowance of ITC on CSR - Gujarat AAR unsettles a settled law

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By Karthik Nair



Introduction:

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eligibility of credit on tax paid on expenditure towards an activity which an organization considers to be special, mandatory or so integrated to its business, is always under close scrutiny by the tax authorities. One such issue is the eligibility to avail credit of GST paid on expenses incurred to fulfil the Corporate Social Responsibility (CSR) cast on an organization.

Under Indirect Tax law, Input Tax Credit (ITC) is undoubtedly one of the most significant aspects of the GST regime, as removal of the cascading effect of the taxes paid is one of the founding principles of the Goods and Services Tax (GST). Section 16 of the Central Goods and Services Tax [Act, 2017](#)

(CGST Act) deals with the eligibility and conditions for taking ITC. Determining the eligibility of tax paid on certain activities/expenses to avail ITC under Section 16(1) of the CGST Act is a critical and highly dispute prone area of the GST law. In this article, we examine the eligibility of credit of input tax in respect of any supply received in connection with CSR activities in light of the recent Advance Ruling given by the Gujarat Authority for Advance Ruling in the case of **M/s Adama India Private Limited, - [2021-TIOL-228-AAR-GST](#)**, where it was held that ITC in connection with CSR activities undertaken by an organisation falls outside the ambit of Section 16(1) of the CGST Act, 2017.

Corporate Social Responsibility

Unlike many countries, in India, CSR assumes significance and is mandatory under Section 135 of the Companies [Act, 2013](#) and incorporates social and environmental considerations into their operations. But looking at CSR from a GST perspective, the question that arises would be whether, a company can claim ITC from the expenses incurred through CSR activities?

Facts and submissions in Adama's case:

In the instant case, on the issue was whether CSR expenses are eligible for ITC in terms of Sections 16 of the CGST Act.

Section 16 of the CGST Act states that every registered person shall, subject to such conditions and restrictions as 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.**

The applicant argued that the expenses incurred on the CSR activities are a mandatory requirement as per the Companies Act and a non-compliance of the said requirement will lead to violation of the provisions of the Companies Act and other social repercussions. These expenses are incurred in the course and furtherance of business by the applicant and therefore, the ITC pertaining to said expenses must be allowed as eligible ITC. Furthermore, CSR activity cannot be treated as gift and hence, ITC on such items cannot be denied under the provisions of Section 17(5)(h) of the CGST Act.

The applicant in support of their submissions relied on:

1. **Essel Propack Ltd. Versus Commissioner of CGST, Bhiwandi, [2018-TIOL-3257-CESTAT-MUM](#)**

2. **Commissioner of Central Excise, Bangalore Versus Millipore India (P.) LTD., Karnataka High Court - CEA 84 of 2009 dated 11 April 2011 .**

The position regarding eligibility to claim credit in respect of CSR activities/expenses was decided in favour of the Applicant in the aforesaid decisions in the erstwhile CENVAT regime. The applicant in support to their submissions, relied on the Ruling by the Authority for Advance Ruling - Uttar Pradesh, under GST in re:

Dwarikesh Sugar Industries Limited, reported in [2020-TIOL-305-AAR-GST](#)

Findings and Ruling in Adama's case:

The AAR brushed aside all the decisions/ruling cited by the Applicant, without going into their ratio or reasoning. The Authority disregarded the decisions in **Essel Propack (Supra)** and **Millipore India (Supra)** on the ground that the said decisions pertained to the pre-GST era and therefore have no application insofar as GST law is concerned. The ruling in **respect of Dwarikesh Sugar Industries Limited, (Supra)** was rejected on the ground that it being an advance ruling under the CGST Act, it is not binding on any third parties in terms of Section 103 of the CGST Act. The AAR proceeded on the basis that Rule 4(1) of the Companies (CSR Policy) Rules, 2014 (Prior to the amendment) and Rule 2(d), as amended vide Companies (CSR Policy) Amendment Rules, 2021 dated 23 rd January, 2021, which states that the CSR activities undertaken by the Company shall exclude activities undertaken in pursuance of its normal course of business and therefore, CSR activities cannot be considered to be in the course or furtherance of business as required under Section 16(1) of the CGST Act.

Analysis of the current scenario in regard to eligibility to claim ITC on CSR activities

Post **Adama India (supra)**, the difference between the phrases "**normal course of business**" mentioned under Rule 2(d) and Rule 4 of the CSR (Policy) Rules and "**in the course or furtherance of business**" under Section 16(1) of the CGST Act may have to be explored. The decisions cited by the Applicant in **Adama India (supra)** were rejected by the Authority on the sole reason that the law being dealt with was from the pre-GST era, without looking into the binding ratio or even the reasoning of the said decisions, only to unsettle a well-settled position of law. **Adama India (supra)** has not considered the reasoning of **Dwarikesh Sugar Industries (Supra)** on the ground advance ruling in the case of one assessee is not binding on other assessees.

Irrespective of whether the ruling in Adama's case is correct or not, or whether it is binding or not, it is likely to trigger some commotion. In light of the contrary views expressed by AARs in the cases of **M/s Dwarikesh Sugar Industries (Supra)** and of **M/s Adama India Private Limited (Supra)**, the issue may have to be contested if any objection is raised by the Revenue, until the position is settled. It would be interesting to see if the Central Board of Indirect Taxes and Customs (CBIC) would step in to settle the position, more so, when such ineligible ITC would become a cost to the organisation and would eat away a substantial part of the intended budget for CSR activity.

[The author is Joint Partner, Lakshmikumaran & Sridharan, Attorneys, New Delhi and the views expressed are strictly personal.]

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