



Dimensions – 129th Edition

Rulings under GST era

Adama India Pvt. Ltd. - Authority for Advance Ruling, Gujarat¹

Issue for Consideration

Whether input tax credit ('ITC') can be availed on input and input services pertaining to Corporate Social Responsibility ('CSR') activities?

Discussion

- The Applicant spends 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. The vendors supplying such goods / services levy GST on such supplies.
- The Applicant approached the Authority for Advance Ruling ('the Authority') to know whether it is eligible to avail such ITC charged by the vendors. The Applicant submitted that it is eligible to claim the ITC and contended as follows:
 - As per section 16 of CGST Act, 2017 ('the Act'), the foremost condition to avail the ITC is that the credit should be used in the course or

furtherance of business. The definition of business under section 2(17) of the Act, states that any activity done in connection with the main business operations should be covered under 'business'. The Applicant is mandatorily required to spend on CSR activity as per the Companies Act, 2013. Thus, any disclosure of non-compliance of CSR activities will hamper the reputation and the growth of the business.

- Reliance was placed upon various judgments to state that CSR is essential and mandatory for smooth operations of business and connected with the business.
- The eligibility of ITC on various goods / services in terms of section 17 of the Act is as follows:

Books and Stationery for schools, masks, sanitizers, chairs and tables in schools and hospitals

- This is nowhere restricted under section 17(5) of the Act and also cannot be regarded as a gift. There is a clear distinction between gift and those covered under the CSR, since the former is voluntary while the latter is obligatory.

¹ TS-505-AARGUJ-2021-GST



Reliance was placed upon the ruling of Dwarikesh Sugar Industries Ltd.

Construction of cement benches, public urinals, school auditorium

- As the construction expenditure is not being capitalized in the books the same is not restricted under section 17(5)(c) of the Act.

Procurement and installation of oxygen plant at hospitals, water filters, solar water heaters

- These goods are plant and machinery, since as per section 17(5) of the Act, the term plant and machinery means apparatus, equipment, and machinery fixed to the earth by foundation or structural support. As these goods are fixed to the earth, the credit should be eligible
- If the ITC for inputs and input services pertaining to CSR activities are allowed, then a company shall have more funds at its disposal for CSR, since the GST charged is presently being treated as a part of the CSR expenses.
- The department contended that the Applicant was eligible to claim ITC on CSR activities.
- The Authority after taking into account the facts of the case, observed as follows:
 - As per Companies (CSR Policy) Rules, 2014, CSR activities exclude activities undertaken in pursuance of its normal course of business.
 - Further, section 16 of the Act states that a registered person is entitled to take ITC 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.
 - Thus, after conjoined reading of the above provisions, section 16 bars to claim ITC on CSR activities.

Ruling

ITC cannot be claimed on goods / services procured for CSR activities.

Dhruva Comments:

The authorities have adopted an interpretation to state that CSR activities are undertaken not in the normal course of business, and hence ITC is not eligible under section 16 of the Act. The ruling does not take into consideration the fact that such activities are mandatorily required to be undertaken by the enterprise. There are several judicial precedents wherein it is held that activities which are undertaken as a statutory function are to be regarded as in the course of business and qualify for input tax credit. Interestingly, even though in the present case the department agreed that the credit was eligible, the Authority has denied the credit.

Considering the present pandemic situation and the companies spending a large amount on CSR activities, the Government should consider clarifying the issue.

Kanahiya Realty Pvt. Ltd. - Authority for Advance Ruling, West Bengal²

Issues for Consideration

- Whether supply of goods at a nominal price under a sales promotion scheme is leviable to tax under the Central Goods and Services Tax Act, 2017 ('the Act').
- Eligibility of input tax credit to the Applicant in respect of purchase of goods supplied at discounted prices.

Discussion

- The Applicant is a manufacturer of hosiery products such as vests, briefs, etc. and intends to implement a sales promotion scheme wherein it would offer various goods such as gold coins, air conditioners,

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refrigerators, etc. to their retailers at nominal prices to boost the sales of its hosiery products.

- Retailers would be eligible to receive the discounted goods on purchase of certain units of the hosiery products under the scheme. Also, the retailers would have a choice not to purchase the products offered by the Applicant.
 - The Applicant has approached the West Bengal Authority for Advance Ruling ('the Authority') to determine the taxability of such discounted products supplied by them and availability of input tax credit ('ITC') paid on purchase of such products and submitted as follows:
 - The hosiery products would be sold under a tax invoice and applicable tax would be recovered from the retailers. Subsequently, by issuing a separate tax invoice with applicable tax, the eligible retailers would be given an option to purchase the discounted products.
 - The supply of hosiery goods and the incentivised products are separate individual supplies with separate consideration and hence should not be classified as composite or mixed supplies under GST.
 - Reliance is placed on the advance ruling pronounced in the case of *Columbia Asia Hospitals Pvt. Ltd.*³ wherein it was held that where supply of medicines, food, drinks and healthcare services are not made for a single price, they would form independent supplies taxable at rates applicable to such individual supplies.
 - Further, the products are not supplied in conjunction with each other as supply of the discounted products are conditional upon the purchase of certain units of the hosiery products by the retailers. Also, it is worth noting that the retailers have an option not to purchase the discounted products.
- The supplies are not naturally bundled in the ordinary course of business and thus would not qualify as a 'composite supply' under the Act.
 - With reference to the ITC eligibility on purchase of such discounted goods, the Applicant submits that ITC of such goods would be eligible under section 16(1) of the Act since they are intended to be used in the course or furtherance of business.
 - The term 'business' defined under the Act includes any incidental activity related to trade, commerce, manufacture, etc. and hence supply of products at nominal rates under a promotional scheme intended to boost sales of hosiery goods would qualify as supply 'in the course or furtherance of business'
 - Section 17(5) provides that ITC of tax paid on purchase of goods which are supplied, *inter alia*, as gifts would be ineligible under GST. However, in the facts of the present case, the goods are supplied at discounted prices and not free of cost under the scheme. Thus, this restriction would not be applicable in the present case.
- The Authority observed as under:
 - The supply of the hosiery goods and the discounted products are undertaken through separate invoices and are not done for a single price and thus cannot be regarded as mixed supplies.
 - These products cannot be considered as naturally bundled nor are they supplied in conjunction with each other and thus, do not fall under 'composite supply' under the Act. Tax on both the supplies shall be levied at their respective notified rates.
 - The supply of products under the promotion scheme qualifies as an activity undertaken in the course or furtherance of business and cannot be held to be given as 'gift' and therefore, the ITC of such products purchased

³ 2018 (12) TMI 474



cannot be disallowed under section 17(5) of the Act.

- Supply of products at nominal prices entirely depends upon the purchase of specified units of hosiery products by the retailers resulting in price **not being the sole consideration** for its supply. Thus, the value of such goods would be determined as per section 15 of the Act read with rule 27 of CGST Rules, 2017.

Ruling

- The Authority held that supply of discounted products under a promotional scheme would qualify as individual supplies liable to tax at rates notified for the respective goods.
- ITC in respect of purchase of goods intended to be supplied under the scheme would be available to the Applicant.

Dhruva Comments:

Since the implementation of GST, whether the goods supplied under sales promotion scheme amount to supply or are eligible for ITC are contentious issues. The current ruling while on one hand allows ITC to the supplier, has questioned whether the 'value', is the sole consideration. However, in the absence of any separate consideration flowing between the parties, it can be argued that achieving a sales target is merely a condition agreed for such entitlement and does not warrant any addition to the value. Additionally, it appears that the transaction is not between related parties, hence ordinarily such price ought to be sole consideration in absence of any additional consideration.





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