

Whether the inputs and input services procured by the applicant, in order to undertake the mandatory CSR activities as required under the Companies Act, 2013, qualify as being in the course and furtherance of business and therefore will be counted as eligible ITC in terms of Section 16 of the Central Goods and Services Tax Act, 2017 ('CGST Act')? b. Also, if the answer to the above question is in the affirmative, whether the categories of the following inputs and input services being procured by the applicant for the purpose of undertaking CSR activities will constitute as eligible ITC in terms of section 17(5) of the CGST Act: HELD BY AAR CSR activities, as per Companies (CSR Policy) Rules, 2014 are those activities excluded from normal course of business of the applicant and therefore not eligible for ITC, as per Section 16(1) of the CGST Act. UPHeld BY AAAR

APPELLATE AUTHORITY ADVANCE RULING (APPEAL) NO. GUJ/GAAAR/APPEAL/2023/04,
Dated 26th September, 2023

GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING

GOODS AND SERVICES TAX

D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,

AHMEDABAD - 380 009.

(IN APPLICATION NO. Advance Ruling/SGST&CGS 17202I/AR/26)

Name and address of the appellant	:	M/s. Adama India Private Limited Plot No. D-2/CILI, GIDC Estate, Dahej, Tal-Vagra, Dahej, Bharuch-392130 Gujarat
GSTIN of the appellant	:	24AABCM8797NIZO
Advance Ruling No. and Date	:	GUJ/GAAR/R/44/2021 DATED 11.08.21
Date of appeal	:	22.10.2021
Date of Personal Hearing	:	06.01.2023 & 26.07.2023
Present for the appellant	:	Shri Gorky Tiwari

At the outset we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 and Gujarat Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act, 2017' and the 'GGST Act, 2017') are in pari materia and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act, 2017 would also mean reference to the corresponding similar provisions in the GGST Act, 2017.

2. The present appeal has been filed under Section 100 of the CGST Act, 2017 and the GGST Act, 2017 by M/s Adama India Private Limited (hereinafter referred to as Appellant) against the Advance Ruling No. GUJ/GAAR/R/44/2021 dated 1 1.08.2021.

3. Briefly the facts of the case is as under:

4. M/s Adama India Private Limited, Plot No. D-2/CH-1, GIDC Estate, Dahej, Tal-Vagra, Dahej, Bharuch-392130 Gujarat (hereinafter referred to as 'the appellant'), holding GSTIN: 24AABCM8797NIZO, are suppliers of insecticides, fungicides and herbicides.

5. The appellant submitted that as per Section 135 of the Companies Act, 2013, it has been spending

the mandatory amount on Corporate Social Responsibility [for short '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.; that the vendors who supply goods/services to the appellant for the purpose of undertaking the CSR activities charge GST on their output supplies; that the appellant intends to avail the Input Tax Credit (ITC) of the inputs and input services being procured for the purpose of undertaking the CSR activities.

6. The appellant sought advance ruling on the following questions:

a. Whether the inputs and input services procured by the appellant, in order to undertake the mandatory CSR activities as required under the Companies Act, 2013, qualify as being in the course and furtherance of business and therefore will be counted as eligible ITC in terms of Section 16 of the Central Goods and Services Act, 2017 (CGST Act)?

b. Also, if the answer to the above question is in the affirmative, whether the categories of the following inputs and input services being procured by the appellant for the purpose of undertaking CSR activities will constitute as eligible ITC in terms of Section 17(5) of the CGST Act:

Sl. No.	Category of inputs/input services.	Expense Items (illustrative)
1	Books and stationery	Providing Notebooks/ course materials for schools.
2	All kinds of civil works, whether or not including plant and machinery items	Construction of cement bench al public places, public urinals, auditoriums etc. at educational institutions.
3	All plant and machinery items	Procurement and installation of oxygen generating plant at hospitals, waler filler plants. solar water heaters.
4	Medical equipment and accessories	Masks. Sanitizers. Oxygen concentrator.
5	furniture	Chairs and tables in schools and hospitals.

7. The Gujarat Authority for Advance Ruling (hereinafter referred to as "GAAR") vide its order No. GUJ/GAAR/R/44/2021 dated 11.08.2021, gave the following ruling to the aforementioned questions:-^

"CSR activities, as per Companies (CSR Policy) Rules, 2014 are those activities excluded from normal course of business of the applicant and therefore not eligible for ITC, as per Section 16(1) of the CGST Act."~

8. Being aggrieved with the above Ruling, the appellant has preferred the present appeal on the following grounds:

(a) GAAR denied the eligibility of ITC on CSR activities to the appellant on the basis of the definition of CSR activities provided under Rule 2(d) of Companies (CSR Policy) Rules, 2014 ('CSR Rules') as amended by Companies (CSR Policy) Amendment Rules. 2021. It has been held in the Ruling that as per the definition of CSR activities, the same docs not include the activities that are done by an entity in its 'normal course of business', the relevant text of the amended definition has been reproduced as hereunder:

"2(d) Corporate Social Responsibility (CSR)" means the activities undertaken by a Company in pursuance of its statutory obligation laid down in Section 135 of the Act in accordance with the provisions contained in these rules, but shall not include the following, namely:-

(i) activities undertaken in pursuance of normal course of business of the company"

(b) No reasons has been provided by GAAR as to why the CSR activities are not done in the course and furtherance of business and arc hence not eligible to be availed as ITC as per Section 16(1) of the CGST Act. The GAAR has simply relied upon the CSR Rules and has observed that the definition

of CSR activities state that the same is not in the 'normal course of business' and therefore ITC for the said activities is also disallowed since the same is not in the 'course and furtherance of business' as required under the GST law. However GA AR has failed to assign any nexus or relationship between the definition of CSR activities as provided in the CSR Rules and the criteria for availing the ITC enshrined in Section 16(1) of the CGST Act.

(c) GAAR has grossly erred in interpreting the expressions 'normal course of business' and 'in the course of and furtherance of business'. It is pertinent to note that every registered person under GST can avail the ITC of inputs and input services subject to fulfilment of criteria laid down as per Section 16 of the CGST Act. However, inter-alia, the first and foremost condition for availing the ITC of inputs and input services as per section 16 of the CGST Act is to ensure that the same is being used in the 'course and furtherance of business'.

(d) GAAR has erroneously treated the expression 'normal course of business' and 'course and furtherance of business' on the same footing and has denied the benefit of ITC. As per the CSR Rules, CSR activities will not include such activities that are undertaken by the Company in its normal or ordinary course of business. However, it doesn't mean that the CSR activities are not in the 'course of furtherance of business'. In other words, neither the CSR Rules nor the Companies Act state that CSR activities are not in the course and furtherance of business.

(e) The CSR activities as per the Companies Act do not include such activities which a company undertakes as part of its usual or routine business. However, on the contrary, CSR activities undertaken by a company are absolutely in the 'course and furtherance of business' which is a broader term and includes any activity undertaken by a company which directly or indirectly impacts its business.

(f) The CSR activities as per the Companies Act read with CSR Rules do not include such activities that are undertaken by a Company in its 'normal course of business'. However, that does not mean that the CSR activities are not undertaken in the 'course and furtherance of business'. Both the expressions used in the Companies Act and under Section 16(1) of the CGST Act carry different meaning and connotations and cannot be equated so as to disallow the ITC on CSR activities.

(g) Although the expression course and furtherance of business has not been defined in the GST law, it simply means any activity done by a company for the betterment of its business, The CSR activities, since they are mandatory as per the Companies Act and contribute to earning goodwill for a company, shall be said to be done in the 'course and furtherance of business' and therefore ITC for the same must be allowed to the appellant pursuant to the provisions of Section 16(1) of the CGST Act.

(h) The appellant relied upon the following judgments:-^

(i) Essel Prepack Vs. Commissioner of CGST, Bhiwandi [2018 (362) ELT 833 (Tri-Mumbai) wherein it was held that CSR is mandatory and essential for smooth business operations of a company.

(ii) CCE Bangalore Vs. Millipore India Pvt. Ltd. [2012 (26) SIR 514 (Kar.)] wherein it was held by the Karnataka HC that the CSR expenses being a statutory obligation are connected with the business since its cost forms part of the finished goods being manufactured by a business.~

(i) As mentioned in para 8 of the GAAR order, the SGST department concurs with the view of the appellant that CSR activities are used in the course and furtherance of business and therefore ITC of inputs and input services utilized towards the mandatory 2% spending of CSR fund as required under the Companies Act must be allowed to the appellant. Thus where the revenue department has agreed that the ITC pertaining to CSR activities can be availed by the appellant, they cannot Hip Hop and pronounce a contrary advance ruling inconsistent with their own view'.

9. During the course of virtual personal hearing held on 06.01.2023 and 26.07.2023, the authorized representative for the appellant, Shri Gorky Tiwari reiterated the submissions made in their appeal and also submitted that the GAAR, without assigning any reasons, denied the eligibility of ITC on CSR activities; that CSR related expenses are in course and furtherance of business; that CSR activities are statutory requirement and it is in furtherance of business; that GST department has agreed to their submissions. The appellant further also furnished additional written submissions vide

letter dated 24.01.2023 wherein it was submitted that pursuant to section 2(17)(b) of the CGST Act, an activity or a transaction which is done in connection with the main business operations of the company shall be covered under the definition of 'business' under the GST law; that in their case, pursuant to section 135(7) of the Companies Act, 2013, a company may incur a penalty of twice the unspent amount required to be transferred to any fund included in Schedule VII of the Act or the unspent CSR Account, or one crore rupees, whichever is less and every officer in default must pay a penalty of 1/10th of the unspent amount required to be transferred to any fund included in Schedule VII of the Act or unspent CSR Account, or two lakhs rupees, whichever is less; that it is clear that a company has no other way except to spend such CSR amount or transfer such amount to funds specified by Govt. Non spending of CSR funds will definitely have an impact on the functioning of company as penal provisions will have financial impact as well as how the brand is perceived by the customers. Thus since expenditure incurred on CSR activities is mandated as per the law, it is an activity in the course and furtherance of business and therefore the ITC pertaining to the said expense must be allowed. They further relied on the ruling in the case of M/s. Bambino Pasta hood Industries P.Ltd., [TSA AR order No. 52/2022] wherein it was held that expenditure made towards CSR is an expenditure made in the furtherance of the business & will be eligible for ITC under the CGST and SGST Act.

Discussions and Findings:

10. Time limit for filing appeal:

11. The impugned Ruling has been passed by the GAAR on 11.08.2021.

In the Form GST ARA-02 regarding Appeal to the Appellate Authority for Advance Ruling, al Sr.No.2, the appellant has shown the date of communication of the Advance Ruling as '24.08.2021'. We observe that the present appeal filed on 22.10.2021, has been filed after the prescribed time limit of 30 days from the date of communication of Ruling, which expired on 23/09/2021, as prescribed under section 100(2) of the CGST Act, 2017. There has been a delay of 30 days. In the application for condonation of delay filed by the appellant alongwith the appeal.

the appellant submitted that the delay has occurred on account of ill health of their staff looking after litigation work because of Covid-19 and thereafter the resources were fully engaged in GST year end activity, further due to Covid-19 pandemic, the company was operating on a limited staff. The appellant requested to condone the delay in terms of provisions to Section 100 of CGS I Act, 2017, wherein the appellate authority has been vested with power to condone delay upto 30 days if the appellant was prevented by a sufficient cause from presenting the appeal within thirty days of receipt of order. We find sufficient cause to condone the delay of 30 days in filing the appeal after expiry of appeal period on 23.09.2021.

12. Even otherwise, as per Order dated 10.01.2022 of Hon'ble Supreme Court in Misc. Application No.21 of 2022 in Misc. Application No.665 of 2021 in Suo Moto Writ Petition (C) No.3 of 2020, the period from 15.03.2020 till 28.02.2022 shall stand excluded in computing the period of limitation and all persons shall have a limitation period of 90 days from 01.03.2022. In view of the foregoing, we condone the delay in filing the appeal in terms of section 100 of the CGS I Act, 2017 and proceed to decide the appeal on merits.

13. We have gone through the facts of the case as submitted in the Appeal papers, the Ruling of the GAAR, documents on record and oral as well as all the written submissions made by the appellant.

14. We find that the appellant has sought ruling on the questions as enumerated in para 6 above. The ruling sought on point (b) is to be considered only if the ruling to point (a) is in affirmative. Firstly, the provision related to CSR is mandated under the Companies Act, 2013. As per Section 135 of the said Act,-^

"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 during any financial year shall constitute a Corporate Social Responsibility Committee of the Hoard consisting of three or more directors, out of which at least one director shall be an independent director. "~

Further Rule 2(d) of the Companies (CSR Policy) Rules, 2014, made by the Central Government in exercise of its powers under section 469 of the Companies: Act, 2013, defines CSR as follows:-^

"2(d) "Corporate Social Responsibility (CSR)" means the activities undertaken by a Company in pursuance of its statutory obligation laid down in section 135 of the Act in accordance with the provisions contained in these rules, but shall not include the following, namely:- (i) activities undertaken in pursuance of normal course of business of the company: Provided that any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22, 2022-23 subject to the conditions that- (a) such research and development activities shall be carried out in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII to the Act; (b) details of such activity shall be disclosed separately in the Annual report on CSR included in the Board's Report: (ii) any activity undertaken by the company outside India except for training of Indian sports personnel representing any State or Union territory al national level or India al international level; (iii) contribution of any amount directly or indirectly to any political party under section 182 of the Act; (iv) activities benefiting employees of the company as defined in clause (k) of section 2 of the Code on Wages, 2019 (29 of 2019); (v) activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services; (vi) activities carried out for fulfilment of any other statutory obligations under any law in force in India; "~

As submitted by the appellant in their appeal memorandum they fulfill the criteria laid down under Section 135 of the Companies Act, 2013 as aforementioned; that they have been spending 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..

15. The appellant is therefore mandated to spend on CSR activities. Before examining whether ITC is available to the appellant for the inputs and input services procured to undertake mandatory CSR activities, it would be prudent to reproduce the relevant provision for availing of ITC, viz,-^

"Section 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 he credited to the electronic credit ledger of such person. "

"Section 17 : Apportionment of credit and blocked credits

(1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

.....
.....

(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18. input tax credit shall not be available in respect of the following, namely:-

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples: "~

16. The ITC on inward supplies shall be available only if outward supplies are taxable. Under CSR activities the company provides outputs/output services free of cost. Since CSR is made free of cost,

and not with the motive to earn profit but to fulfill commitments towards the society, environment etc., expenses incurred cannot be treated as in course of or furtherance of business. As per Section 2(108) of CGST Act, 2017, 'taxable supply' means a supply of goods or services or both which is leviable to tax under this Act; It is not the case of the appellant that their supplies under CSR activities are leviable to GST. Thus taking into account the definition of taxable supplies and the provisions of Section 17(2) of CGST Act, 2017, input credit cannot be availed on CSR activities, further as per the provision of Section 37 of the Income Tax Act, 1961, any expenses incurred by an assessee on corporate social responsibility activities as given under Section 135 of the Companies Act, 2013 shall not be considered to be an expense incurred by the assessee for the objectives of the company or profession. Hence when the same does not amount to business expenditure and ITC cannot be claimed on such expenditure.

17. On going through the Agenda of the 48th GST Council Meeting dated 17.12.2022 [Volume II], Agenda Item 7(xvi), it is observed that the Law Committee in its meeting held on 5.12.2022 opined that ITC in respect of CSR expenditure incurred by Companies u/s 135 of Companies Act, 2013, should not be allowed. The Law Committee further recommended that to unambiguously state such a position, such CSR expenditure may be included in the list of blocked credit u/s 17(5) of the CGST Act, 2017. Thereafter in the Minutes of the 48th Meeting of the GST Council, it is clearly mentioned that the Council agreed with the recommendation of the Law committee in the matter. This substantiates our finding above. We further find it apt to reproduce the wordings of the Hon'ble High Court of Delhi in the case of Manufacturers Traders Association [2020 (43) GS I L 616 (Del)], wherein it was held as follows:-^

"10.....The Respondent No. 3 is a Constitutional body chaired by the Union Minister for Finance and all other members are the Union Minister of State for Finance, and Ministers for Revenue or Finance of all the States. The 101st Amendment to the Constitution had brought into existence the GST framework and created Respondent No. 3 as the highest deliberative forum to resolve the issues arising out of the implementation of the GST. The rate of taxes is jointly decided by the Centre and States on the recommendations of the Council. The Council has the power and prerogative to issue recommendations on issues in terms of Article 279A(4) of the Constitution. The composition of Respondent No. 3 and the constitutional scheme of taxation is a clear indication that the functioning of the GST Council is based on collaborative efforts that embody the spirit of cooperative federalism. The coming together of the stakeholders has given rise to a unified system of taxation for the entire country. The GST tax rates must be notified in consonance with the recommendations of the Respondent No. 3. Once the Respondent No. 3 has made the recommendation of the tax rate, we are unable to appreciate the premise of the petitioners to impugn the same. The only aspect that required introspection, now stands concluded in view of the emphatic response of the Respondent No. 3 in its 38th Meeting, wherein they have reiterated that the recommendation for rate of tax was indeed 12%."~

The above analogy clearly applies also in case of ITC.

18. further in finance Act 2023, vide section 139, amendment in Section 17 of CGST Act, 2017, with regard to blocked credit, is proposed by inserting (b) in sub-section (5), after clause (f), namely:-^

"(fa) goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013: "~

Thus above amendment will be effective from 1.10.2023 in terms of notification No. 25/2023-CT dated 31.7.23. Thus, the legislature has clarified its intent to disallow input tax credit on goods or services or both which are to be used for activities relating to obligations under corporate social responsibility.

19. We find that the case laws cited by the appellant in their appeal are of pre-GST era and hence not relevant to the present case. The opinion of the SGST official does not have any legal binding on the advance ruling authority. Further the appellant has relied upon the order dated 20.10.2022 of Telangana AAR in the case of M/s. Bambino Pasta Food Industries Private Limited. We are of the view that as per Section 103 of the CGST Act, any Advance Ruling is binding on the appellant who has sought it and on the concerned officer or the jurisdictional officer in respect of the appellant.

20. In view of the above findings, we reject the appeal filed by appellant M/s Adama India Private Ltd., against Advance Ruling No. GUJ/GAAR/R/44/ 2021 dated 11.08.2021 of the Gujarat Authority for Advance Ruling.

(Samir Vakil)

Member (SGST)

Place : Ahmedabad

Date: 26.09.2023

(B V Siva Naga Kumari)

Member (CGST)

Note: The provisions of both the Central GST Act, 2017 and the Gujarat GST Act, 2017 are similar. Therefore, unless a mention is specifically made, a reference to the CGST Act would also mean a reference to the same provisions under the GGST Act.