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Eligibility of ITC on CSR Expenses Under GST

Eligibility of Input Tax Credit (ITC) on Corporate Social Responsibility (CSR) expenses under GST

Corporate Social Responsibility (CSR) is a concept given under Sec.135 of Companies Act, 2013 whereby companies have to give back to the society or to its stakeholders for their upliftment and betterment, in exchange of using society resources.

Many companies do CSR expenditures by way of building schools, hospitals, laboratories etc. or distributing many goods/services free of cost to charity, trusts, hospitals etc.

This brings one to the debatable topic that whether ITC should be allowed or not on goods/services procured in discharging CSR expenditure.

If we go through provisions under CGST Act, 2017: -

Sec 16 of CGST Act, 2017 states that any registered person be entitled to take ITC on procured goods/services or both if such goods are used or intended to be used in the course or furtherance of business.

Also, Sec 17(5) (h) of CGST Act enumerates that ITC shall not be available in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift and free samples.

So, from the above provisions we can conclude that ITC can be availed if expenses are incurred in the course or furtherance of business and such ITC cannot be availed under Sec 17(5) (h).

Many AAR (Authority for Advance Ruling) of states have given different decisions on taking Input Tax Credit of expenses made on fulfilling CSR obligation as there is considerable amount of ambiguity about whether should be treated as of 'voluntary' nature or 'obligatory' as mandated under Companies Act.

Let's have a look on some rulings over the matter: -

In the case of ***Essel Propack Ltd. vs Commissioner of CGST, Bhiwandi [2020]*** the Hon'ble CESTAT, Mumbai under the service tax regime held that CSR expenditure is not a charity but has a direct bearing on the business activity of a company and helps a company to get positive credit rating and image in the corporate world. Thus, the CESTAT held that CSR activities can be considered as input services since they are included within the definition of "activities relating to business" and accordingly allowed the credit of the same.

But contrary view on ITC was taken by the AAR Kerala in case of ***Polycab Wires Private Limited [2019 (24) G.S.T.L. 103 (A.A.R. - GST)]***: In the said matter, the AAR ruled that CSR expenses incurred for distributing electrical items like, switches, fans, cables etc. to flood affected people free of cost, are covered under the ambit of Section 17(5)(h) of the CGST Act *i.e.*, goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples. Accordingly, the AAR rejected the claim of ITC with respect to such CSR expenses as the items for which the company had claimed expenses were disposed of by way of gift and thereby restricted for ITC purposes under section 17(5)(h) of the CGST Act.

And if we go through CSR provisions under Companies Act, 2013-

Rule 2(1) (d) of companies (CSR policy) Rules, 2014 defines CSR and excludes the activities undertaken in the normal course of business of the company that means it should not be allowable for taking input tax credit as per sec 16 of CGST Act, 2017.

CSR creates a huge positive impact on society regarding company's image and goodwill. Companies like Reliance, Tata, Wipro, Infosys, Mahindra & Mahindra and many others, spend crores of rupees on CSR which builds a brand value for the company and indirectly helps in improving the financials of the company. So, one can say that CSR indirectly plays a major role in growing businesses and hence may be treated as a business expense.

Also, since CSR expenditure (specified % of net profit) is mandatory as per Companies Act, this means that it is not voluntary in nature and so it should be treated as a business expense.

Further, it has been held by the Authority for Advance Ruling, UP in the case of ***Dwarikesh Sugar Industries Ltd. [[2021] 125 taxmann.com 329]***:

"...we are in unison with the applicant that a clear distinction needs to be drawn between goods given as 'gift' and those provided/supplied as a part of CSR activities. While the former is voluntary and occasional, the latter is obligatory and regular in nature. CSR expenses incurred by the applicant have been mandated under the Companies Act, 2013. It is the applicant's obligation to incur such expenses in order to be in compliant with the law. Since CSR expenses are not incurred voluntarily, accordingly, we are of the opinion that they do not qualify as 'gifts' and therefore its credit is not restricted under section 17(5) of the CGST Act, 2017"

Also, there is no clear judgement over CSR expenses in the following cases

- Whether companies which are not mandated to do CSR expenditures are allowed to take ITC on voluntary expenditures?
- Whether sole proprietor ship/partnership firms or other persons which are not companies are allowed to take ITC on CSR expenditures?

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