
INPUT TAX CREDIT ON CSR ACTIVITIES NOT ELIGIBLE: GUJARAT AAR

In a recent ruling, the Gujarat Authority for Advance Ruling (the ‘GAAR’) in the case of M/s Adama India Private Limited¹ (the ‘**Applicant**’) observed that CSR activities are excluded from normal course of business of the applicant and therefore not eligible for Input Tax Credit, as per Section 16(1) of the Central Goods and Services Tax Act, 2017 (the ‘CGST Act’).

Facts:

The Applicant, engaged in the business of supply of insecticides, fungicides and herbicides, spent mandatory amount on CSR Activities in the form of donations to the Government relief funds/educational societies, civil works, installation of plant and machinery and items in schools or hospitals, distribution of food kits, medical equipment etc. In the view of the above, the Applicant sought ruling on whether the inputs and input services procured by the applicant, in order to undertake the mandatory CSR activities, qualify as being in the course and furtherance of business and therefore be counted as eligible ITC in terms of the CGST Act.

Ruling:

The GAAR relied upon Rule 4(1) of the Companies (CSR Policy) Rules, 2014 and Rule 2(d) of Companies (CSR policy) Amendment Rules 2021, which provide that the CSR activities **shall not include** activities undertaken in pursuance of normal course of business. Further, reliance was placed on Section 16(1) of the CGST Act, which provides that a registered person is entitled to take credit of input tax charged on any supply of goods or services or both, which are used or intended to be used in the course or furtherance of the business.

¹ AR No. GUJ/GAAR/R/44/2021 dt. 11.08.2021

In the present facts, as CSR activities are excluded from normal course of business of the Applicant, therefore are not eligible for ITC, as per Section 16(1) of the CGST Act.

VA Comments:

- The ruling has a negative implication upon the corporate sector which in the backdrop of pandemic incurred huge expenditure on CSR activities. Expenditure on CSR activities is a mandatory expenditure under Section 135 of the Companies Act, 2013 and ineligibility of ITC on such expenditure will put additional burden on corporates which are yet to recover from the impact of COVID-19.
- The present ruling also contradicts earlier ruling by Uttar Pradesh AAR in the matter of Dwarikesh Sugar Industries Ltd., which will create ambiguity in the minds of taxpayers.

.....

For any further information/ clarification, please feel free to write to:

Mr. Shammi Kapoor, Partner : shammi@vaishlaw.com

Ms. Swati Agarwal, Principal Associate : swati@vaishlaw.com

Mr. Manik Sharma, Associate : manik@vaishlaw.com

DISCLAIMER

The material contained in this publication is solely for information and general guidance and not for advertising or soliciting. The information provided does not constitute professional advice that may be required before acting on any matter. While every care has been taken in the preparation of this publication to ensure its accuracy, Vaish Associates Advocates neither assumes responsibility for any errors, which despite all precautions, may be found herein nor accepts any liability, and disclaims all responsibility, for any kind of loss or damage of any kind arising on account of anyone acting/ refraining to act by placing reliance upon the information contained in this publication.