

Expenditure incurred on CSR – GST Friendly or not?

GST is a single tax on the supply of goods or services right from the manufacturer to the consumers. One of the major advantage available in GST which was lacking in the erstwhile indirect tax regime was the seamless flow of Input Tax Credit(ITC), while the earlier legislations imposed various restriction on credits, such conditions are now a lot relaxed with introduction of Section 17(5) of the CGST Act, 2017 mentioning a list of inward supplies for which credit is not available(Blocked credit).

ITC provisions under CGST Act

Section 16 of CGST Act, deals with the eligibility & conditions for taking credit and as per sub - section (1) of section 16 of CGST Act, every registered person is entitled to take Input Tax Credit on such supplies which are used in the course or furtherance of business. This is unlike the erstwhile Cenvat credit regime where credit was available only if the goods/services were covered by the definition of inputs, input services or capital goods. However, Input tax credit shall not be available in respect of supplies listed in section 17(5) notwithstanding anything contained in Section 16(1) of the CGST Act.

Therefore, based on above mentioned provisions it can be said that Input tax credit is available for any inward supply which is used in course or furtherance of business, unless the same is covered by the list of supplies mentioned under section 17(5) of the CGST Act. Let us now discuss whether credit can be availed for expenses incurred in meeting various statutory obligations.

Mandatory nature of CSR and business purpose

According to Section 135 of Companies Act, 2013, every company subject to a specific threshold has to spend atleast 2% of it's average net profits for Corporate Social Responsibility ('CSR'). Companies may incur expenses either on procurement of goods /services for distribution, most of such procurements involve a GST component as well. Therefore, if credit is not available for any such expenses, it will be led to denial of Input tax credit. Also, CSR is mandatory under Companies Act,2013 and accordingly non-compliance with such requirements can have implications for businesses.

Cenvat Credit on CSR under erstwhile Cenvat credit regime

In the Case of Essel Propack v. Commissioner, CESTAT where it was held that such expenses are incurred to win the confidence of the stakeholders and shareholders. It also noted CSR which was a mandatory requirement for Public Sector Undertakings (PSUs), has also been made obligatory for the Private sector and unless the same is to considered as input service in respect of activities relating to business, production and sustainability of the company. Hence, Cenvat credit was allowed to the appellent.

Advance ruling on CSR in GST regime

The authorities have however not been so generous under GST. In case of Polycab Wires Pvt Ltd (2019-VIL-100-AAR) the applicant had distributed electrical goods to people affected by flood in Kerala against discharge of its CSR Obligations. The Kerala AAR held that applicant distributed electrical items on free basis without collecting any money & for these transactions Input Tax Credit would not be available as per as per Section 17(5)(h) of the KSGST Act and CGST Act. Therefore, it can be seen that the provisions of Section 17(5)(h) of the CGST Act are invoked to deny ITC of Goods distributed free of cost for meeting CSR Obligations.

ITC on Services used for CSR

Let us now discuss the provision of Section 17(5)(h) of the CGST Act, as per this sub-section, ITC is not available for “goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples”. It is to be seen that said sub-section merely places the ITC restriction on free distribution of goods and does not restrict ITC on provision of services for free. From above provision it's clear that the restriction under section 17(5)(h) cannot be made applicable on free provision of services.

Conclusion

Therefore, two different tax treatments appear to apply for the very same nature of expenses – goods and services. The scope of ITC was already wide in GST and has been further widened under the CGST(Amendment) Act. It is right time that the government will bring in benevolent amendment to ensure that ITC is allowed for distribution of goods and services alike for CSR. This will encourage the industry to come forward for taking up similar projects of CSR which otherwise requires government support.