GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING |  
| GOODS AND SERVICES TAX | NATION |  
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, | aT er  
AHMEDABAD:380009 |  
ADVANCE RULING (APPEAL) NO. GUJ/GAAAR/APPEAL/2023/04  
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2021/AR/26)  
  
Date :2.6 .09.2023  
  
Name and address of the | : | M/s. Adama India Private Limited  
appellant | Plot No. D-2/CH-1, GIDC Estate,  
|| Dahej, Tal-Vagra, Dahej, Bharuch-392130  
| | Gujarat  
  
: | 24AABCM8797N1ZO  
  
| GSTIN of the appellant  
  
Advance Ruling No. and | ; | GUJ/GAAR/R/44/2021 DATED 11.08.21  
Date  
  
|\_\_|  
  
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 ‘lax  
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 Limted (hereinafier  
referred to as Appellant) against the Advance Ruling No. GUJ/GAAR/R/44/2021  
dated 11.08.2021.  
  
3 Briefly the facts of the case is as under:  
  
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4. M/s Adama India Private Limited, Plot No. D-2/CH-1, GIDC Estate,  
Dahe}, Tal-Vagra, Dahej, Bharuch-392130 Gujarat (hereinafter referred to as ‘the  
appellant’), holding GSTIN: 24AABCM8797N1Z0, 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:  
  
Sh | Category of inputs/input Expense Items (illustrative)  
\_No. | services.  
|| Books and stationery | Providing Notebooks/ course  
| materials for schools.  
2 All kinds of civil works, | Construction of cement bench  
| whether or not including /at public places, public  
| plant and machinery items urinals, auditoriums ctc. at  
| | educational institutions.  
3 All plant and machinery | Procurement and \_ installation  
items of oxygen generating plant at: ~~~  
  
| hospitals, water filter plants.~  
  
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| | solar water heaters.  
[4 | Medical equipment and | Masks. Sanitizers, Oxygen  
| accessorics | 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 IVC 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 does 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 are hence not  
cligible 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 SAEIEUN  
  
of business’ and therefore IVC for the said activities is alsqy disallowed”  
  
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(d)  
  
(c)  
  
since the same is not in the ‘course and furtherance of business’ as required  
under the GST law. However GAAR 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 [TC enshrined in Section 16(1)  
  
of the CGST Act.  
  
GAAK 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 [TC 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’.  
  
GAAR has crroncously treated the expression “normal course of business’  
and ‘course and furtherance of business’ on the same footing and has  
denied the benefit of TPC. As per the CSR Rules, CSR activities will not  
include such activities that are undertaken by the Company in it’s normal or  
ordinary course of business. Llowever, 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  
  
notin the course and furtherance of business.  
  
The CSR activitics as per the Companies Act does not include such  
activitics which a company undertakes as part of its usual or routine  
business. Hlowever, 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.  
  
The CSR activitics 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’. Hlowever, 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  
  
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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 carning 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) Issel Prepack Vs. Commissioner of CGST, Bhiwandi [2018 (362)  
ELLY 833 (Pri-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) STR 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 form 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 IVC 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 flip flop 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: hat,  
Nal i ip c  
are statutory requirement and it is in furtherance of business: that GST departing?  
  
er eee  
  
CSR related expenses are in course and furtherance of business; that CSR actiy  
  
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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 1/10the 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 Food Industries P.Ltd., |[TSAAR 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:  
I]. 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, at 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,” =~  
  
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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 provisons to Section 100 of CGST 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  
  
CGST 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 Board 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 Compani  
  
Act, 2013, defines CSR as follows:  
  
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“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 at national level or India at international level; (iii)  
contribution of any amount directly or indirectly to any political party under  
section 182 of the Act; (iv) activities benefitting 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 I'T'C 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 IVC, viz  
  
“Section 16(1) kvery 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 be 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-  
  
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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 48" GST Council Meeting dated  
17.12.2022 [Volume I], 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 Mow  
  
The Law Committee further recommended that to unambiguously state /s  
  
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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 48" 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)  
  
GSTL 616 (Del)|, wherein it was held as follows:  
  
"Oe, wes esuazes 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.  
  
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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.  
  
on bv  
(Samir Vakil ) (B V Siva Naga Kumari)  
Member (SGST) Member (CGST)  
  
Place: Ahmedabad  
Date:26\_ .09.2023  
  
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