



TELANGANA STATE AUTHORITY FOR ADVANCE RULING
CT Complex, M.J Road, Nampally, Hyderabad-500001.
(Constituted under Section 96(1) of TGST Act, 2017)

Present:

Sri S.V. Kasi Visweswara Rao, Additional Commissioner (State Tax)
Sri Sahil Inamdar, Additional Commissioner (Central Tax)

A.R.Com/17/2022

Date:20.10.2022

TSAAR Order No.52/2022

[ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND UNDER SECTION 98(4) OF THE TEALANGANA GOODS AND SERVICES TAX ACT, 2017.]

1. M/s. Bambino Pasta Food Industries Private Limited, 8-2-610-68-1,2,3, Accord Blu, 4th Floor, Banjara Hills, Road No. 10, Hyderabad, Telangana – 500 034 (36AABCP9222D1ZN) has filed an application in FORM GST ARA-01 under Section 97(1) of TGST Act, 2017 read with Rule 104 of CGST/TGST Rules.
2. At the outset, it is made clear that the provisions of both the CGST Act and the TGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the TGST Act. Further, for the purposes of this Advance Ruling, the expression 'GST Act' would be a common reference to both CGST Act and TGST Act.
3. It is observed that the queries raised by the applicant fall within the ambit of Section 97 of the GST ACT. The Applicant enclosed copies of challans as proof of payment of Rs. 5,000/- for SGST and Rs. 5,000/- for CGST towards the fee for Advance Ruling. The Applicant has declared that the questions raised in the application have neither been decided by nor are pending before any authority under any provisions of the GST Act. The application is therefore, admitted.
4. **Brief facts of the case and averments of the applicant:**

The applicant Bambino Pasta Food Industries is a manufacturer of Vermicelli and pasta Products. The Applicant filed for advance ruling application to know the admissibility of ITC on the Corporate Social Responsibility (shortly known as CSR) expenditure spent by it.

In the application it is informed that during the covid time, when oxygen was scarce in the country, Applicant has donated oxygen plant to AIIMS hospital Bibinagar, Yadadri Bhongir District, for the benefit of patients who were suffering with low oxygen levels. For this purpose the applicant has purchased PSA oxygen plant and spare parts for that oxygen plant for Rs. 62,74,200 which includes IGST paid of Rs 9,16,200. The applicant is of the opinion that the expenditure made by them comes under the CSR provisions as per Section 135 of the Companies Act, 2013.

The applicant's interpretation of law and facts in respect of the question are presented as follows:

1. That it is of the view that it is eligible to claim ITC on the CSR expenditure spent by it since it is spent in accordance with the provisions laid down by Companies Act, 2013. CSR expenses incurred by the applicant have been mandated under the Companies Act, 2013.

That it is the Company's obligation to incur such expenses in order to be in compliant with the law. CSR activity is to be considered as "used or intended to be used in the course or furtherance of business" because any Company, which meets the criteria for CSR, is mandatorily required to incur in CSR activities to be in compliant with the Companies Act, 2013.

That the applicant Company is compulsorily required to undertake CSR activities in order to run its business and accordingly, it becomes an essential part of its business process as a whole.

2. That as per Section 17 (5)(h) of the CGST Act, 2017, input tax credit shall not be available in respect of "goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples." That this provision restricted credit of the goods which were written off or disposed of by way of gift or free samples. That the term 'Gift' has not been defined under the CGST Act, 2017, however in common parlance gift is provided to someone occasionally, without consideration and which is voluntary in nature.

Further, that the applicant also relies upon the Judgment of the Hon'ble Supreme Court of India, in the case of *Ku. Sonia Bhatia v. State of UP (1981-VIL-06-SC)*, wherein Hon'ble Court has cited the definition of 'gift' from *Corpus Juris Secundum*, Volume 38 in the following words: "A 'gift' is commonly defined as a voluntary transfer of property by one to another, without any consideration or compensation there for.

That a 'gift' is a gratuity and an act of generosity and not only does not require a consideration, but there can be none." Citing the definition, it has been observed by the Hon'ble Court that "The concept of gift is diametrically opposed to the presence of any consideration or compensation. A gift has aptly been described as a gratuity and an act of generosity and stress has been laid on the fact that if there is any consideration then the transaction ceases to be a gift."

3. That in view of above discussion, a clear distinction needs to be drawn between goods given as 'gift' and those provided /supplied as a part of CSR activities to satisfy the requirement of law.

That while the former is voluntary and occasional the later is obligatory and regular in nature. That the CSR expenses incurred by the applicant have been mandated under the Companies Act, 2013. That 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, applicant is of the opinion that it doesn't qualify as 'gift' and therefore its credit is not restricted under Section 17 (5) of the CGST Act, 2017.

4. That Hon'ble CESTAT Mumbai, in the case of *M/s EsselPropack Ltd. Vs. Commissioner of CGST, Bhiwandi {2018(362) E.L.T. 833 (Tri.-Mumbai) - 2018-VIL-621-CESTAT-MUM-ST}*, has observed that:-" Sustainability is dependent on CSR without which companies cannot operate smoothly for a long period as they are dependent on various stake holders to conduct business in an economically, socially and environmentally sustainable manner i.e. transparent and ethical. Hence in my considered view, CSR which was a mandatory requirement for the public sector undertakings, has been made obligatory also for the private sector and unless the same is to be treated as input service in respect of activities relating to business, production and sustainability of the company itself would be at stake".

5. That the use of the expression 'in connection with' or 'incidental' in the definition of business purports to expand the scope of the definition so as to include such activities which though might not have a direct bearing on the profits of the Company, but, if not done, might result in the business suffering from coercive process and unlawful expropriation which will ultimately hamper its profit making ability. That the said principle was upheld by the Calcutta HC in the matter of *Birla Cotton Spinning & Weaving vs. Commissioner of Income-tax (1967 64 ITR 568 Cal)* wherein it was held 'Business expediency may not require that all expenses be incurred for earning immediate profits. Such expediency may not require that all expenses be incurred for earning immediate profits. Such expediency may also require that expenses be incurred to save business from coercive process and unlawful expropriation so that the business may remain on sound footing and may earn better profits in future.'

6. That the concept of non-availability of ITC on inputs and input services in case of free supplies of goods/services shall not be applicable in the present case since the CSR activities, which involves supply of goods or services without any consideration, are said to be done in course and furtherance of business. Therefore that any expense related to CSR activities gets incurred for the purpose of upkeep or running the business.

7. That Section 135(7) of the Companies Act, 2013, specifies that the company or business may incur a penalty of twice the unspent amount required to be transferred to any fund included in Schedule VII of the Act or unspent CSR Account, as the case may be, 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. It makes it 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 on how the brand is perceived by the customers.

8. That a Company incurs CSR expenditure under statutory compulsion, which is certainly incurred because of running of business and by no stretch of imagination, could it be considered as 'gift' for any reason.

9. That in the Advance Ruling in the case of Dwarikesh Sugar Industries Limited, Uttar Pradesh AAR gave a ruling that CSR is a mandatory obligation on a company. So the expenses incurred by any company in this regard can be considered as incurred in course of furtherance of business. It is mandatory for company to fulfill this obligation to continue its business. AAR also stated that as it is a mandatory obligation and it cannot be considered as gift. So, ITC cannot be said to be blocked.

5. Questions raised:

1. Whether ITC is available on CSR expenditure spent by the company?

6. Personal Hearing:

The Authorized representatives of the applicant i.e., Vamshi Krishna, CA has attended the personnel hearing on 27.09.2022 and reiterated the question and their understanding of the law and facts recorded in their application and requested to dispose the case on merits.

7. Discussion & Findings:

The AAR has perused the statement of averments submitted by the applicant in their application and have reached the following conclusions:

1. The applicant has purchased an oxygen plant for Rs.62,74,200/- and has given it to AIIMS Hospital has part of their corporate responsibility under section 135 of the companies Act, 2013.
2. The sum and substance of the averments made is that these purchases are made in furtherance of their business and hence tax on such purchases is eligible for input tax credit under section 16(1) of the CGST Act.
3. Section 135 of companies Act, 2013 enshrines corporate social responsibility as follows:

"Sub-Sec(1). 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 in the immediately preceding 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".....

Sub-Sec (5) The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial year, or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.

Sub-Sec (6) Any amount remaining unspent under sub-section (5), pursuant to any ongoing project, fulfilling such conditions as may be prescribed, undertaken by a company in pursuance of its Corporate Social Responsibility Policy, shall be transferred by the company within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer,

failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year.

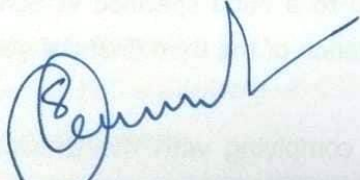
Sub-Sec (7) If a company is in default in complying with the provisions of sub-section (5) or sub section (6), the company shall be liable to a penalty of twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or one crore rupees, whichever is less, and every officer of the company who is in default shall be liable to a penalty of one-tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or two lakh rupees, whichever is less.

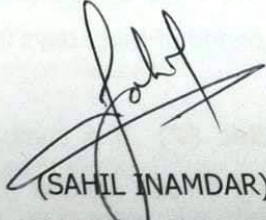
4. As seen from the above statutory provisions of the Companies Act, 2013, the Companies with a specified networth or net profit are obliged to incur a minimum of 2 % of their net profit towards their corporate social responsibility and failure to do so will attract penalty under sub section 7 of sec.135 of the said Act which may go upto a maximum of Rs.1 Cr., . Thus, the running of the business of a company will be substantially impaired if they do not incur the said expenditure. Therefore, the expenditure made towards corporate responsibility under section 135 of the Companies Act, 2013, is an expenditure made in the furtherance of the business. Hence the tax paid on purchases made to meet the obligations under corporate social responsibility will be eligible for input tax credit under CGST and SGST Acts.

8. The ruling is given as below:

In view of the above discussion, the questions raised by the applicant are clarified as below:

Questions	Ruling
Whether ITC is available on CSR expenditure spent by the company?	The expenditure made towards corporate responsibility under section 135 of the Companies Act, 2013, is an expenditure made in the furtherance of the business. Hence the tax paid on purchases made to meet the obligations under corporate social responsibility will be eligible for input tax credit under CGST and SGST Acts.


 (S.V. KASI VISWESWARA RAO)
 ADDL. COMMISSIONER (STATE TAX)


 (SAHIL INAMDAR)
 ADDL.COMMISSIONER (CENTRAL TAX)

[Under Section 100(1) of the CGST/TGST Act, 2017, any person aggrieved by this order can prefer an appeal before the Telangana State Appellate Authority for Advance Ruling, Hyderabad, within 30 days from the date of receipt of this Order]

To
 M/s. Bambino Pasta Food Industries
 Private Limited, 8-2-610-68-1,2,3,
 Accord Blu, 4th Floor, Banjara Hills,
 Road No. 10, Hyderabad,
 Telangana – 500 034.

Copy submitted to :

1. The Commissioner (State Tax) for information.
2. The Commissioner (Central Tax) Hyderabad Commissionerate, GST Bhavan, Lb Stadium Road , Basheerbagh Hyderabad – 500 004.

Copy to:

3. The Superintendent (Central Tax) Gunfoundry – I Range, 1st Floor, H.No.5-8-196-207, 207A Jusbagh, Nampally, Hyderabad - 500 001 .

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Superintendent (Grade-I)