

**GUJARAT AUTHORITY FOR ADVANCE RULING,
GOODS AND SERVICES TAX,
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.**



ADVANCE RULING NO. GUJ/GAAR/R/44/2021

(IN APPLICATION NO. Advance Ruling/SGST&CGST/2021/AR/19)

Date: 11-08-2021

Name and address of the applicant	:	M/s. Adama India Private Limited, Plot No.D-2/CH-1, GIDC Estate, Dahej, Tal-Vagra, Dahej, Bharuch- 392130, Gujarat.
GSTIN of the applicant	:	24AABCM8797N1ZO
Date of application	:	09-06-2021.
Clause(s) of Section 97(2) of CGST/ GGST Act, 2017, under which the question(s) raised.	:	(d)Admissibility of input tax credit of tax paid or deemed to have been paid.
Date of Personal Hearing	:	27-07-2021.
Present for the applicant	:	Shri Gorki Tiwari, Sr. Manager and Shri Ramakrishna Hari, GM, Finance

BRIEF FACTS:

The applicant M/s. Adama India private limited, supplies insecticides, fungicides and herbicides. The applicant submits that as per Section 135 of the Companies Act, 2013, it has 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; that the vendors that supply goods/services to the applicant for the purpose of undertaking the CSR activities charge GST on their output supplies; that the applicant intends to avail the Input Tax Credit(ITC) of the inputs and input services being procured for the purpose of undertaking the CSR activities.

2. The applicant seeks to know whether CSR activities are in the course of furtherance of business and will therefore be counted as eligible ITC in terms of Sections 16 and 17(5) of the CGST Act, 2017.

3. The applicant submitted as follows:

- (i) The applicant is eligible to seek Advance Ruling under Section 95(c) of the CGST Act, 2017 and the question on which they are seeking Advance Ruling is covered under Section 97(2)(d) of the Act.
- (ii) Every registered person under GST can avail the ITC of inputs and input services subject to fulfilment of criteria laid down as per Section 16 of the CGST Act, however, 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. Thus, for any inputs or input services to be come eligible ITC, it is imperative that the same must be used in the course and furtherance of business, although the expression 'course and furtherance of business' has nowhere been defined in the GST law. In other words, inputs and input services pertaining to CSR activities being undertaken by the applicant can become eligible ITC if only it is established that such activities are in the course and furtherance of business.

- (iii) The term 'business' is defined under Section 2(17) of the CGST Act, to include:
(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
(b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
(c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
- (iv) The above definition envisages that even 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. In the present case, the expenses incurred on the CSR activities by the Applicant are a mandatory requirement as per the Companies Act and any disclosure regarding non-compliance of the said requirement will lead to tarnishing the image of the company, lower brand value, lower market standing and lower credit rating.
- (v) In view of the above, it is submitted that use of the expression 'in connection with' or 'incidental' in the aforesaid 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. 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.'
- (vi) The applicant wishes to rely on the judgement of Hon'ble CESTAT in the matter of Essel Propack vs. Commissioner of CGST, Bhiwandi [2018(362) ELT 833 (Tri-Mum)] wherein it was held that CSR is mandatory and essential for smooth business operations of a Company. The relevant text of the judgement is reproduced as hereunder:

"Therefore, 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."
- (vii) Similar judgement was passed by the Hon'ble Karnataka HC in the matter of Commr. Of CEX, Bangalore, vs. Millipore India pvt.ltd. 2012[26]STR.514(Kar.) it was held 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. The relevant text of the judgement is reproduced as under:

"That apart, now the concept of corporate social responsibility is also relevant. It is to discharge a statutory obligation, when the employer spends money to maintain their factory premises in an eco-friendly manner, certainly, the tax

paid on such services would form part of the costs of the final products. In those circumstances, the Tribunal was right in holding that the service tax paid in all these cases would fall within the input services and the assessee is entitled to the benefit thereof.”

(viii) *In view of the above submissions on merits and judicial pronouncements, it is submitted that CSR expenses, being mandatory in nature, are incurred in the course and furtherance of business by the applicant and therefore the ITC pertaining to the said expenses must be allowed as eligible ITC under Section 16 of the CGST Act.*

4. The applicant further submits that once it is established that incurring the CSR expenditure is in the course and furtherance of business, the ITC of the categories of inputs and input services being procured by the applicant to undertake CSR activities is eligible ITC and does not suffer from any infirmities as envisaged under Section 17(5) of the CGST Act which is summarized below:

S. No.	Category of inputs/input services	Expense items (illustrative)	Applicant's submission
1	Books and Stationery	Providing Notebooks/ course materials for schools	(a)The ITC pertaining to books and stationery items is nowhere blocked under the provisions of Section 17(5). However, the supply of said goods without any consideration being received might appear to be as 'gifts' and hence the ITC may not be eligible under Section 17(5)(h). However, it is to be noted that UP AAR in the matter of Dwarikesh Sugar Industries limited by relying on SC judgement passed in the matter of Ku.Sonia Bhatia v. State of UP, held 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. Thus, supply of books and stationery by the applicant cannot be considered as 'gift' and therefore the ITC pertaining to the said item is not barred under section 17(5)(h). (b)The concept of non-availability of ITC of 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. Thus, any expense related to CSR activities gets incurred for the purpose of upkeep or running the business and hence ITC pertaining to inputs or input services in such cases doesn't warrant any reversal.
2.	All kinds of civil works, whether or not including plant and machinery items	Construction of cement bench at public places, public urinals, school auditoriums	Section 17(5)(c) of the CGST Act restricts the ITC of works contract service in case where the same is procured for the purpose of construction of immoveable property. However, the definition of 'construction' as per the explanation to section 17(5)(d) of the Act excludes any such construction where the cost incurred by the recipient has not been capitalized in the books. In the given case, since the applicant is treating the civil works as business expenditure and not capitalizing the same, the ITC pertaining to works contract service must be allowed.
3	All plant and machinery items	Procurement and installation of oxygen generating plant at hospitals, water filter plants, solar water heaters	As per section 17(5)(c) and 17(5)(d) of the CGST Act, 2017, ITC of plant and machinery items is eligible credit and is not blocked or barred anywhere in the GST law. The definition of plant and machinery items has been given as explanation to section 17(5) of the CGST Act, i.e. any apparatus, equipment or machinery fixed to earth by foundation or structural support. Therefore, in the present case, the plant and machinery items such as oxygen generator plant/water filters that are fixed to earth with the help of foundational or structural support are outside the scope of section 17(5) and the ITC pertaining to its installation and procurement shall be eligible.
4	Medical equipment and accessories	Masks Sanitizers, Oxygen concentrator	(a)The ITC pertaining to medical equipment and other related accessories items is nowhere blocked under the provisions of Section 17(5). However, the supply of said goods without any consideration being received might appear to be as 'gifts' and hence the ITC may not be eligible under section 17(5)(h). However, it is to be noted that UP AAR in the matter of Dwarikesh Sugar Industries limited by relying on SC judgement passed in the matter of Ku. Sonia Bhatia v. State of UP, held 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. Thus, supply of medical

			<p>equipment and accessories by the applicant cannot be considered as 'gift' and therefore the ITC pertaining to the said item is not barred under section 17(5)(h).</p> <p>(b)The concept of non-availability of ITC of 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. Thus, any expense related to CSR activities gets incurred for the purpose of upkeep or running the business and hence ITC pertaining to inputs or input services in such cases doesn't warrant any reversal.</p>
5	Furniture	Chairs and tables in schools and hospitals	<p>(a)The ITC pertaining to furniture items is nowhere blocked under the provisions of Section 17(5). However, the supply of said goods without any consideration being received might appear to be as 'gifts' and hence the ITC may not be eligible under section 17(5)(h). However, it is to be noted that UP AAR in the matter of Dwarikesh Sugar Industries limited is relying on SC judgement passed in the matter of Ku. Sonia Bhatia v. State of UP, held 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. Thus, supply of furniture items supplied by the applicant cannot be considered as 'gift' and therefore the ITC pertaining to the said item is not barred under section 17(5)(h).</p> <p>(b)The concept of non-availability of ITC of 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. Thus, any expense related to CSR activities gets incurred for the purpose of upkeep or running the business and hence ITC pertaining to inputs or input services in such cases doesn't warrant any reversal.</p>

5. The applicant has submitted that it is eligible to avail the ITC of all the above categories of inputs and input services items which are being procured for the purpose of undertaking CSR activities.

6. The applicant vide letter dated 29-7-2021 submitted that all the input items such as furniture, stationery, plant and machinery items, oxygen concentrators/oxygen plant which are being procured and donated as part of the CSR activity cannot be treated as gift and hence Input Tax Credit(ITC) on such items cannot be denied under the provisions of section 17(5)(h); that since the expression 'gift' has not been defined anywhere in the GST law, reference is drawn from the Hon'ble SC judgement in the matter of Ku.Sonia Bhatia vs. State of UP & Ors. [1981 SCR(3) 239] wherein it was held that a gift is an act of generosity and is voluntary in nature. The relevant text has been reproduced as under:

"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"

6.1 The applicant submitted that CBIC in a press note has also sought to define gift on similar lines and that as per press note issued on 10-7-2017, CBIC has defined gift as something that is given without consideration and is voluntary in nature. The applicant has relied upon the decision of Uttar Pradesh Advance Ruling Authority in the AAR issued on 22-1-2020 in the matter of Dwarikesh Sugar Industries limited has also held that goods being gifted as part of CSR activity is not voluntary since it is a statutory obligation as prescribed under the Companies Act and hence cannot be treated as a gift in view of the Ku Sonia Bhatia judgement(supra). The relevant text is reproduced as under:

"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."

6.2 The applicant submits that input tax credit on any inputs which are procured for the purpose of donating as part of CSR activity is not hit by the provisions of section 17(5)(h) and hence must constitute as eligible ITC and that allowing the benefit of availment of CSR expenses related ITC will enable the company to spend more on the CSR activities; that as required by the provisions of the Companies law, the company is spending the mandatory 2% of the Average Net Profits in the CSR activities and the GST suffered on the input/input services items procured is accounted for as CSR related expense; that in cases where GST suffered on inputs and input services items on activities pertaining to CSR is being allowed as eligible input tax credit, the company shall have more funds at its disposal and will be able to contribute more towards the social cause while meeting the mandatory 2% requirement.

Question on which Advance Ruling sought?

7. The applicant has sought Advance Ruling on the following questions:
- a. Whether the inputs and input services procured by the applicant, 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 Tax 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 applicant for the purpose of undertaking CSR activities will constitute as eligible ITC in terms of section 17(5) of the CGST Act:

S. No.	Category of inputs/input services	Expense items (illustrative)
1	Books and stationery	Providing Notebooks/course materials for schools
2	All kinds of civil works, whether or not including plant and machinery items	Construction of cement bench at public places, public urinals, auditoriums etc. at educational institutions.
3	All plant and machinery items	Procurement and installation of oxygen generating plant at hospitals, water filter plants, solar water heaters.
4	Medical equipment and accessories	Masks, Sanitizers, Oxygen concentrator.
5	Furniture	Chairs and tables in schools and hospitals.

Revenue's Submission:

8. The Assistant Commissioner of State Tax, Unit-56, Ankleshwar has submitted as follows:
- (1) The activity/service in respect of which an Advance Ruling has been sought is an 'Ongoing Activity'.
 - (2) The questions/issues raised in the application are not pending or decided at 'Unit-56 level' in any proceedings in the case of the applicant as of today.
 - (3) The application can be admitted for granting Advance Ruling considering the following reasons: "The activity which is carried out by the supplier is in the course of business and furtherance of its business."
 - (4) Under Section 135 of the Companies Act, 2013, a Company must spend mandatorily 2 per cent of its average net profits for the past three financial years, on corporate social responsibility (CSR). For the

furtherance of business, it is mandatory for the company to spend expenditure under CSR. So ITC is eligible for the same.

Personal Hearing:

9. Shri Gorki Tiwari, Sr. Manager and Shri Ramakrishna Hari, GM, Finance appeared for the hearing (Video Conferencing) on 27-7-2021 and reiterated the contents of the application.

FINDINGS:

10. At the outset we would like to make it clear that the provisions of CGST Act and GGST Act 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 would also mean reference to the corresponding similar provisions in the GGST Act.

11. We have carefully considered all the submissions made by the applicant and the revenue. We note that the issue hinges on whether CSR activities are in the course or furtherance of applicant's business.

12. **We refer to the Companies (CSR Policy) Rules, 2014**, made by the Central Government in exercise of its powers under section 469 of the Companies Act. **Rule 4(1) of the said Rules reads as follows:**

*"4.(1) The CSR activities shall be undertaken by the company, as per its stated CSR policy, as projects or programs or activities(either new or ongoing), **excluding activities undertaken in pursuance of it's normal course of business.**"*

Further, vide Companies (CSR policy) Amendment Rules 2021, even the definition of CSR, itself, excluded activities undertaken in pursuance of normal course of business of the company, reproduced as follows, the **Rule 2(d) of said Rules, defines CSR** as follows:

*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;*

13. We find that as per Rule 4(1) above (for the period prior to 23-1-2021), the CSR activities undertaken by the company **shall exclude activities** undertaken in pursuance of it's normal course of business. As per Section 2(d) above(w.e.f. 23-1-2021), 'Corporate Social Responsibility' **does not include activities** undertaken in pursuance of normal course of business of the company. We find that the CSR activities are not activities undertaken in

pursuance of applicant's normal course of business.

14. Section 16(1) of the CGST Act, stipulates 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 his business. **Thereby, We hold that the Section 16(1) of the CGST Act bars CSR activities from input/input service.**

15. **In pursuance to Companies CSR Rules framed by the Central Government and in pursuance to wordings of Section 16(1) CGST Act, we disagree with both the applicant's and revenue's stand for admissibility of ITC on CSR activities. In fact, we note that the applicant submitted that CSR activities being undertaken by the applicant can become eligible for ITC if only it is established that such activities are in the course and furtherance of business. As per law, Section 16(1) CGST Act bars CSR activities from ITC.** We therefore find no merit to discuss the item wise CSR activities of the applicant.

16. The applicant cited caselaws: i. CESTAT order in the case of Essel Propack vs. Commissioner of CGST, Bhiwandi and (2) Hon'ble Karnataka High Court's decision in the matter of CEX, Bangalore vs. Millipore India pvt.ltd. Both these orders pertain to the pre-GST era when demands on wrong availment of cenvat credit were issued based on the violations of the Cenvat Credit Rules, 2004 and are not pertaining to GST scheme of law. Further, the judgement of Birla Cotton Spinnings & Weavings vs. Commissioner of Income-tax pertains to Income-tax related issues. As regards the reliance of the applicant on the Decision of the Advance Ruling Authority of Uttar Pradesh in the matter of Dwarikesh Sugar Industries limited, we hold that this Advance Ruling, as per the provisions of **Section 103** of the CGST Act, the Advance Ruling pronounced by the Advance Ruling Authority shall be binding only on the applicant who had sought it and the concerned officer or the jurisdictional officer in respect of the applicant.

17. In Conspectus of aforementioned findings, we issue the Ruling:

RULING

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.

(SANJAY SAXENA)
Member(S)

(ARUN RICHARD)
Member(C)