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### **ITC available on CSR expenses as in the course of business**

The Hon'ble AAR, Uttar Pradesh in the matter of *M/S. Dwarikesh Sugar Industries Limited* [Order No. 52, dated January 22, 2020] held that expenses incurred towards Corporate Social Responsibility ("CSR") by the Company in order to comply with requirements under the Companies Act, 2013 ("**Companies Act**") qualify as being incurred in the course of business and therefore, eligible for Input Tax Credit ("**ITC**") in terms of the Section 16 of the Central Goods and Services Tax Act, 2017 ("**CGST Act**").

#### **Facts:**

M/s. Dwarikesh Sugar Industries Limited, ("**the Applicant**") is a Company engaged in the business of manufacture and sale of sugar and allied products. In order to comply with the CSR norms in terms of Section 135 of the Companies Act, the Applicant undertakes certain activities and in order to undertake the CSR activities, the Applicant procures various goods and services on which GST is charged by the supplier.

#### **Issues:**

- Whether expenses incurred by the Company in order to comply with requirements of CSR norms under the Companies Act, qualify as being incurred in the course of business and eligible for ITC in terms of the Section 16 of the **CGST Act**?
- Whether free supply of goods as a part of CSR activities is restricted under Section 17(5)(h) of CGST Act?
- Whether goods and services used for construction of school building which is not capitalized in the books of accounts is restricted under Section 17(5)(c) / Section 17(5)(d) of CGST Act?

#### **Held:**

The Hon'ble AAR, Uttar Pradesh in *Order No. 52, dated January 22, 2020* held as under:

- After analysing the provision of Section 135 of the Companies Act and observed that any Company who meets the criteria for CSR is mandatorily required to incur in CSR activities to be in compliant with the Companies Act, and non-compliance of these provisions may lead to business disruptions. Further observed that, the term "Gift" has

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- Noted that, the Applicant is compulsorily required to undertake CSR activities in order to run its business and accordingly, it becomes an essential part of his business process as a whole. Therefore, the CSR activities are to be treated as incurred *"in the course of business"*.
- Held that, since CSR expenses are not incurred voluntarily, accordingly, they do not qualify as 'gifts' and therefore, its credit is not restricted under Section 17(5) of the CGST Act.
- Further held that, Section 17(5)(c) and Section 17(5)(d) of the CGST Act, has specifically restricted the ITC on construction / work contract service to the extent of capitalization. Accordingly, the ITC of goods and services used for construction of school building will not be available to the Applicant to the extent of capitalization.

**Relevant Provisions:**

**Section 16(1) of the CGST Act:**

*"Eligibility and conditions for taking input tax credit-*

*16. (1) Every registered person shall, subject to such conditions and restrictions as maybe 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(5)(c), (d) and (h) of the CGST Act:**

*"Apportionment of credit and blocked credits-*

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*(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;*

*(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.*

*(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and*

*Explanation.—For the purposes of clauses (c) and (d), the expression “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;”*



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