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ITC on Masks and Sanitizers

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ABSTRACT

The article emphasized as to how masks and sanitizers are not being permitted under input tax credit to seek relaxations in a situation of such pandemic, where the installation of such products are itself made mandatory by the government for the safety of its employees and workers and as to how important is it to add masks and sanitizers under the category of essential commodities and to not categorize them as goods used for personal consumption. ITC is allowed to every registered person who in the course of its business avails credit on the input tax on the goods and services provided. Further to how CSR contribution could be helpful to the assessee to claim such a benefit under it and is it valid and justified to do so?

The researcher tries to bring out all possible points that could be in favor and benefitting the assessee. Finally, the paper deals with famous case laws which will give the reader an insight to help them understand the need and implications of such a statute.

Keywords: *Input Tax Credit, Essential Commodity, Corporate Social Responsibility.*

I. INTRODUCTION

This pandemic of Covid-19 has led to a situation whereby people were under the nationwide lockdown with a mandate to sit inside and follow the mantra of work from home. The pandemic forced not only the whole nation but even the international borders were said to be ceased. As the disease was spreading by way of not keeping proper hygiene and sanitization, the products like masks and sanitizers were declared as essential commodities, which were need of the hour as these were to be installed at workplaces for safety measures.

On March 13, the government by way of empowering the states, in respect of the regulation of production, distribution, and then the pricing of the masks and hand sanitizers, declared as essential commodities till 30th June 2020, for 100 days¹ to boost up the supply and to prevent and abolish any kind of hoarding and black-marketing.

However, on July 07, 2020, the government kept out masks and sanitizers from the purview of Essential Commodities Act 1955², as the supply of these goods was sufficient to fulfill the

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² Section 2A Essential Commodities Act, 1955, Act 10, 1955

needs of the country, as stated by the government.

II. WHY THE GOVERNMENT IS NOT WILLING/ UNLIKELY TO EXEMPT GST ON THESE ESSENTIAL COMMODITIES?

Though one of the pillars of GST is a free flow of credits to cascade of taxes, ITC is not available in respect of the certain inward supply of goods or services.

The government received numerous applications seeking relaxations on masks and hand sanitizers for not permitting credit on goods given for free or as a gift, or lost, stolen, destroyed, or written off, in Blocked Credits under GST³.

ITC means any claim or credit in GST that has already been paid by the assessee on the purchase of those goods and services used for the furtherance of the business. The implementation of the input tax credit is said to be the backbone and one of the most important factors for the introduction of GST, building a chain to take benefit of the uninterrupted flow of credits by everybody.

Currently, the GST on masks is 5% and on sanitizers is 18% due to which, there have been several demands claiming that exemption on such commodities will ultimately lead to reduction of prices. As the exemption would threaten the interest of domestic manufacturing industries so involved by burdening them to prepare and maintain different accounts of inputs, input credits, and capital goods, which would not suffice the cause and ultimately not resulting in gains to the customers. The government referred and compared the situation, with the exemption so provided in the case of sanitary napkins to the manufactures.

On April 19, 2020, it was clearly stated by the government, that any exemption about to with concerning the medical equipment like masks and sanitizers would not be allowed, as this would further lead to blocked ITC, which will further raise the costs of manufacturing and will ultimately lead to the rise of prices for the customers.

But the government was in favor of exempting customs duty and health cess (till September, 30) on such items, not including sanitizers, because that need of these goods is essential in the Covid-19 pandemic, and the supply for the same is increasing in the market.

Under section 16(1) CGST⁴, which clearly states that as long as the conditions of the section are fulfilled, ITC would be allowed to every registered person and he would be entitled to take

³ Section 17(5)(h) CGST Act, 2017, <http://economictimes.indiatimes.com/news/company/corporate-trends/firms-may-get-input-tax-credit-for-masks>

⁴ Section 16 CGST Act, 2017, GST Series Part 9

credit of input tax charged on any supply of goods and services, intended to be used in the course or furtherance of his business. Further considering the above-mentioned section, ITC would be blocked in respect of sec 17(5) in case of:

- a) *Personal Consumption*
- b) *Gift*

III. DISTRIBUTION OF SANITIZERS AND MASKS ARE TO BE REGARDED AS PERSONAL CONSUMPTION OR GIFTS?

An Amendment was made on 1 February 2019⁵, where a proviso was added to sec 17(5), where it provided that, ITC in respect of such goods and services or both would be eligible for where an employer must provide the same to its employees under the law for the time being in force.

Where the ITC was earlier only applicable for the businesses dealing in it and not for the businesses using it for personal consumption and the sanitary purposes of its employees, but after the effect of Covid-19, few amendments were made and even the Ministry of Home Affairs issued guidelines for the same and one such amendment was in respect of the consumption of essential commodities like sanitizers and masks under Epidemics Disease Act, 1897, where it was stated that any such action performed under these circumstances shall be treated as a statutory obligation by the employer, or safety of its employees at the workplaces instead of voluntary care action.

*CIT Kerala vs Malayalam Plantations Limited*⁶ the term, “for business purposes” is not only inclusive of day to day business mechanism but also for the preservation and protection of the assets and property from any kind of exploitation, under sec 10(2) (xv)⁷. It sets the limits for the assessee carrying a business i.e. any sum or amount spent in respect of the third party cannot be included. The amount paid by the assessee was not in connection to the business through such imposition arose by way of an accident because of the territorial nexus of him doing business in India.

Inferring from the above judgment, any expenditure done for business purposes is to be included within the meaning and any expenses incurred on the protection of employment are within the ambit of such employment made to run the business smoothly. Therefore, expenditure on the procurement of masks and sanitizers is to be referred to as expenses within

⁵ GST Amendment Laws, 2019

⁶ 1964 AIR 1722, 1964 SCR (7) 693

⁷ Income Tax Act, 1922

the course of business.

There is nowhere mentioned the term 'gift' under GST and to understand the meaning of the same we refer it from the Transfer of Property Act, which clearly states that a gift is kind of a voluntary contribution made of existing movable or immovable property without any consideration, from donor to the donee accepted by him or anyone on behalf of such donee.

To deduce from the above discussion, where the supplies of masks and hand sanitizers are made an obligation within the ambit of statutory duty by the government, such contribution made by the employer cannot be termed under gift as there is no voluntary contribution by them without any consideration made.

IV. CAN THESE CONTRIBUTIONS BE COVERED UNDER THE FRAMEWORK OF CSR ACTIVITY?

To allow the relaxations on masks and sanitizers, CSR rules can be put forward to be claimed which have already allowed the companies on expenditures related to socio-economic welfare, including services charged free of cost. Where the services are being given by the company as part of CSR the input tax credit can be availed on the same. In today's need, such expenditure on masks and sanitizers is for the well-being and therefore input GST should be made available under CSR.

CSR is a commitment by the companies to facilitate the triple-bottom-line approach, whereby the companies operate to work, develop, and enhance the society by way of positive contribution. Such expenses are mandatory and are done in the furtherance of the business. Any kind of failure would bring penal provisions affecting the business of such companies.

*Essel Propack Ltd. vs Commissioner of CGST, Bhiwandi*⁸ Hon'ble CESTAT on ITC on expenditure on CSR discharging CSR obligation, a mandatory requirement can be availed by the company. It was observed that it not being a charity, rather an activity whereby the company achieves a balance of economic environmental and social imperatives.

Contradicting the same, AAR Kerala in case of *In Re: Polycab Wires Private Ltd.*⁹ Goods distributed by the applicant were disposed of as free supplies to people affected by floods in Kerala, without collecting any money, whereby reversing input tax credit already availed. ITC in respect of goods distributed free of cost under CSR activities are disallowed under sec 17 (5) (h).

⁸ Order No. A/87216/2018

⁹ 2019 (24) G.S.T.L 103 (A.A.R-GST)

Consideration under sec 2 (31) CGST Act about to with concerning supply of goods or services or both do not include any subsidy given by Central or State Government, and any such deposit given in aspect of these goods or services or both shall not be considered as payment unless consideration made by the supplier.

V. CONCLUSION

Provisions of sec 17 (5) (h) CGST Act has been invoked denying ITC of goods distributed under CSR obligation free of cost. The section specifies about goods lost, stolen, destroyed, written off, or disposed of by way of gift or free samples.

The section only covers the ambit of goods and mentions about same and not services and where the distribution of masks and sanitizers are providing of services to be made to the employees and to ensure their safety, ITC w.r.t. CSR on such distribution of masks and sanitizers should not be covered under the ambit of blocked credit.

CSR being the indirect benefit to the company and in a way of securing its employees under necessary and obligatory services to be provided, therefore, the government should bestow credits on the supply of such services under GST.
