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# ITC on CSR activities under GST



CA. Anshul Medatwal  
on 23 January 2020

## ITC on Corporate Social Responsibility



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## Some Important Definitions:

Goods means every kind of movable property other than money and securities but include actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply. [Sec. 2(52) of CGST Act]

Services means anything other than goods, money and securities but include activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged. [Sec. 2(102) of CGST Act]

### Business includes - [Sec 2(17)(b)]

- any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
- any activity or transaction in connection with or incidental or ancillary to (a) above;
- any activity or transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;
- supply or acquisition of goods including capital assets and services in connection with commencement or closure of business;
- provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members, as the case may be;
- admission, for a consideration, of persons to any premises; and
- services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- activities of a race club including by way of totalizator or a license to book maker or activities of a licensed book maker in such club
- any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities

**Input means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business [Section 2(59)].**

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Input service means any service used or intended to be used by a supplier in the course or furtherance of business [Section 2(60)].

Capital goods means goods, the value of which is capitalized in the books of account of the person claiming the ITC and which are used or intended to be used in the course or furtherance of business [Section 2(19)].

Consideration in relation to the supply of goods or services or both includes any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government. [Section 2(31) of CGST Act]



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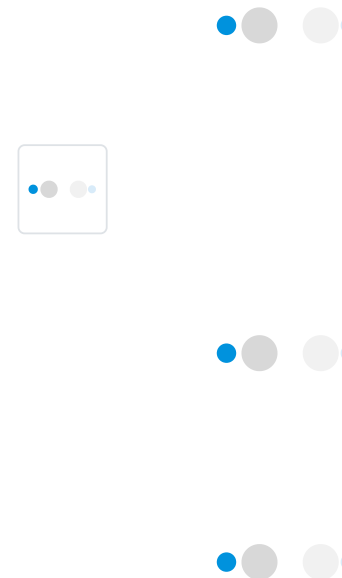
### Some important Facts

Section 135(5) of the Companies Act, 2013 mandates CSR expenditure in every financial year, to the extent of minimum 2% of the average net-profits of the Company made during 3 immediately preceding financial years, in pursuance of CSR policy.

The said rules mandate company to perform and report the same in their Board reports.

Further if we consider the definition of 'Business' under GST, CSR activities may have covered under Sec 2(17) (b) of GST Act,2017.

If we argued ineligibility of ITC on CSR activities on the basis of section 17(5)(h) then



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'CSR expenses cannot be said to be goods lost, stolen, destroyed, written off or goods disposed off through free samples. Further CSR expenses are not expenses in nature of gifts'.

CSR activity is not in nature of gift because in common parlance 'Gift' is something which cannot enforce on any one. However, somehow, CSR activity enforced via the Companies act. (Definition of GST is not provided by CGST Act)

### **Cenvat credit on CSR under earlier regime**

In the case of Essel Propack v. Commissioner [2018-TIOL-3257-CESTAT-Mumbai], CESTAT observed that CSR is not in the nature of charity as it has got a direct bearing on the manufacturing activity of the company which is largely dependent on smooth supply of raw materials. Further, it augments the credit rating of the company and its standing in the corporate world. The Tribunal thus held that such expenses are incurred to win the confidence of the stakeholders and shareholders. It also noted that 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. Hence, Cenvat credit was allowed to the appellant.

If we compare GST with pre GST taxes then we will observe that, GST have much wider scope of ITC. Therefore, cenvat credit was allowed on CSR before GST then same shall be allowed after GST.

### **CSR in GST regime**

The authorities have however not been so generous under GST. In the case of Polycab Wires Pvt Ltd reported at 2019-VIL-100-AAR, the applicant had distributed electrical goods to people affected by flood in Kerala against discharge of its CSR obligations. The Kerala AAR held that the applicant distributed electrical items on free basis without collecting any money and for these transactions input tax credit would not be available as per Section 17(5) (h) of the KSGST Act and CGST Act. Therefore, it can be seen that the provisions of Section

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17(5)(h) of the CGST Act are invoked to deny ITC of goods distributed free of cost for meeting CSR obligations.

Further if we consider the definition of 'consideration' (refer above) under GST then,

We are receiving confidence of stakeholders, public or society and maintain social position in corporate as a consideration (not in money terms) of CSR activities. Therefore, it should not be consider as distributed free of cost. Consideration may or may not be monetary as per Section 2(31) of CGST Act.

Moreover, the provisions of Section 17(5)(h) of the CGST Act. said, ITC is not available for 'goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples'. It is to be seen that the said sub-section merely places ITC restriction on free distribution of goods and does not restrict ITC on provision of services for free.

#### **In my views:**

CSR activities are those activities which give indirectly benefits to company & helps to run its business. ITC on CSR activity is legal requirement and it mandate company to do the same, therefore, it is also one of the reason to consider as eligible ITC until & unless transactions specifically covered under sec 17(5) i.e., Block Credit. Further as per understanding, CSR activities should not be considering u/s 17(5)(h). Government has not clarified yet. However, intention of Government to come up with GST is to wider the scope and flow of ITC. GST provide free hand to take ITC on all inputs or input services except transaction covered u/s 17(5).

Therefore, we should take ITC on transactions of CSR activities which are not covered u/s 17(5).

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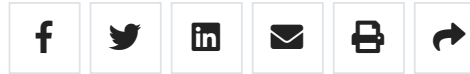
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In my opinion it is a double edged sword. if we take ITC on the inputs used for CSR activities, then the free samples provided should be subjected to GST. we cannot pay the tax and take credit only.

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CSR activities shall not be consider as free samples & it is an input which is indirectly used for making supply so, CSR activities are not consider as output.

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Well said

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