

**AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX
UTTAR PRADESH
4, Vibhuti Khand, Gomti Nagar, Lucknow-**

ADVANCE RULING NO. UP ADRG- 18/2022 DATED 09/12/2022
PRESENT:

- 1. Shri Rajendra Kumar**
Additional Commissioner, Central Goods and Service Tax
Audit Commissionerate, Lucknow Member (Central Tax)
- 2. Shri Vivek Arya**
Joint Commissioner, State Goods and Service Tax Member (State Tax)

1.	Name of the Applicant	SHRIRAM PISTONS AND RINGS LIMITED, A-4 to A-7, B-8/1 & 2, B 9 & 10, Industrial Area III, Meerut Road, Ghaziabad- 201 003 (U.P.)
2.	GSTIN or User ID	09AAACS0229G1ZN
3.	Date of filing of Form GST ARA-01	28.09.2022
4.	Represented by	Shri Sanjay Kumar and Shri Atul Gupta, Advocate
5.	Jurisdictional Authority-Centre	Range-XI, Division- III Ghaziabad
6.	Jurisdictional Authority-State	Sector- Ghaziabad Sector 4 Range- Ghaziabad (A), Uttar Pradesh
7.	Whether the payment of fees discharged and if yes, the CIN	Yes UTIB22090900427742

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017 & UNDER SECTION 98
(4) OF THE UPGST ACT, 2017**

1. M/s SHRIRAM PISTONS AND RINGS LIMITED, A-4 to A-7, B-8/1 & 2, B 9 & 10, Industrial Area III, Meerut Road, Ghaziabad- 201 003 (U.P.) (here in after referred to as the applicant) is a registered assessee under GST having GSTIN: 09AAACS0229G1ZN.

2. The applicant has submitted an application for Advance Ruling dated 14.10.2022 enclosing dully filled Form ARA-01 (the application form for Advance Ruling) along with annexure and attachments. The applicant in his application has sought advance ruling on following question-

(a) Whether the Applicant is entitled to avail Input Tax Credit of the GST paid on various services/ expenses incurred towards discharging its CSR obligation, can be considered as being in course or furtherance of business in terms of Section 16(1) of the CGST Act, 2017 r/w UPGST Act, 2017?.

3. As per declaration given by the applicant in Form ARA-01, the issue raised by the applicant is neither pending nor decided in any proceedings under any of the provisions of the Act, against the applicant.

- 3.1 Shriram Pistons and Rings Limited (hereinafter referred to as 'Applicant') is engaged in manufacture and supply of automobile parts (two wheelers and four wheelers) viz. Engine Parts such as Pistons, Piston rings, Engine Valves etc. and related products from its manufacturing unit (factory) located at A-4 to A-7, B-8/1 & 2, B 9 & 10, Industrial Area III, Meerut Road, Ghaziabad- 201 003 (U.P.).
- 3.2 The Applicant is a company incorporated under the Companies Act, 1956 and is engaged in developing, manufacturing and marketing of its finished products. The Applicant with GSTIN 09AAACS0229G1ZN is registered with the Goods and Services Tax Department in the state of Uttar Pradesh and falls within the jurisdiction of Central Goods and Services Tax Commissionerate, Ghaziabad.
- 3.3 With an initiative to provide financial assistance to improve the lives of under-served and unprivileged sections of the society, the Ministry of Corporate Affairs of the Government of India, vide an amendment in 2013 in the Companies Act 1956, introduced '**Corporate Social Responsibility Policy**' (hereinafter referred, as '**CSR**') in Section 135 of the Companies Act. The said Policy provides the guidelines to be followed by corporations/companies for conducting Corporate Social Responsibility by contributing to improve sanitation, water facility, healthcare, education, etc.
- 3.4 In view of Section 135 of the Companies Act, 2013 (hereinafter referred to as the 'Companies Act'), a Company having net worth of five hundred crore or more, or turnover of more than one thousand crore or more or a net profit of rupees five crore or more during the immediate preceding financial year, is bound to constitute a Corporate Social Responsibility Committee ('CSR Committee'). The provisions relating to Corporate Social Responsibility (CSR) is enumerated in Section 135 of the Companies Act and the same is reproduced below:

"135. Corporate Social Responsibility.

(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 during 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.

Provided that where a company is not required to appoint an independent director under sub-section (4) of Section 149, it shall have in its Corporate Social Responsibility Committee two or more Directors.]

(3) The Corporate Social Responsibility Committee shall –

(a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company [in areas or subject, specified in Schedule VII];

(b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a);

(c) monitor the Corporate Social Responsibility Policy of the company from time to time.

(4) The Board of every company referred to in sub-section (1) shall, -

(a) after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and

(b) ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.

(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 years [or where the company has not complete the period of three financial years since its incorporate, during such immediately preceding financial years], in pursuance of its Corporate Social Responsibility Policy:

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities:

Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of Section 134, specify the reasons for not spending the amount [and, unless the unspent amount relates to any ongoing project referred to in sub-section (6), transfer such unspent amount to a Fund specified in Schedule VII within a period of six months of the expiry of the financial year].

Provided that also that if the company spends an amount in excess of the requirements provided under this sub-section, such company may set off such excess amount against the requirement to spend under this sub-section for such number of succeeding financial years and in such manner, as may be prescribed]

[Explanation – For the purpose of this section “net profit” shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of Section 198]

(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.

(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."

3.5 In view of the above, as the net worth or net profit of the Applicant exceeds the prescribed limit and that it meets with the other criteria laid down in the aforesaid provision, a legal obligation is on the Applicant to incur expenses on the activities of Corporate Social Responsibility as per Section 135 (1) of the Companies Act and also constitute a CSR Committee.

3.6 The CSR Committee, in accordance with Section 135 (3) (a) of the Companies Act (reproduced above), formulates/frames a Corporate Social Responsibility Policy ('CSR Policy'), indicating the activities like the ones mentioned in Schedule VII of the Companies Act, 2013 which the Applicant may undertake for discharging its CSR obligations. The Policy also postulates/ budgets out the expenses to be incurred by the Applicant on the activities/areas and monitors its progress thereof, from time to time, in terms of Section 135(3)(b) and (c) of the Companies Act. Upon approval from the Board of Directors to the recommendations mentioned in the CSR Policy placed by CSR Committee, the same is uploaded on the Applicant's website in compliance to Section 135(4)(b) of the Companies Act.

3.7 The Applicant, in compliance to the statutory requirement of Companies Act and that it could carry out its business operation without any hindrance, incurs expenses on various activities in relation to CSR obligations as any contravention thereof would entail serious penal consequences on the Applicant as well as on the officer of the Company in default in terms of sub-clause (7) of Section 135 of the Companies Act.

3.8 CSR focuses on the idea that a business has social obligation above and beyond making a profit. It requires a management to be accountable to the full range of stakeholders. It is a continuing commitment of business to behave ethically and contribute to the sustainable economic development by working with all stakeholders to improve their lives in the ways that are good for business and the society at large. It is a way of integrating the economic, social and environmental imperatives of business activities which promotes the growth of the Company and derives the following benefits:

- CSR improves the public image of the Company by publicizing the efforts towards a better society and increase their chance of becoming favorable in the eyes of consumers.
- CSR increases media coverage as media visibility increases positive approach towards the Company.
- CSR enhances the company's brand value by building a socially strong relationship with customers.
- CSR helps companies to stand out from the competitors when such company is involved in any kind of community service.

All the aforesaid activities promote the growth of business, therefore the Applicant engages various vendors/suppliers to carry out activities in relation to Education, Sanitation, Healthcare, Environment etc. for complying with the statutory requirement of meeting its CSR obligations. The Applicant receives various goods and services in relation to such CSR activities.

3.10 On such supply of goods and services, the Applicant pays the consideration to the suppliers along with the applicable Goods and Services Tax ('GST') wherever applicable. List of activities on which CSR expenses is being incurred by the Applicant, is enclosed as Exhibit – 2.

3.11 Under the aforesaid circumstances, the Applicant seeks the present advance ruling to understand whether the Applicant is eligible to take Input Tax Credit (ITC) of the GST charged by various vendors for the goods and services supplied to the Applicant, expenses which have been incurred by Applicant for discharging its statutory CSR obligation under the Companies Act.

4. The applicant has submitted their interpretation of law as under-

4.1 Applicant's interpretation that the expenses incurred by it in order to comply with the statutory requirement of CSR under the Companies Act, qualify as being incurred in the course of business and thus eligible for ITC under Section 16 of the CGST Act. The submissions in support of the aforesaid interpretation have been enunciated in the ensuing paragraphs:

4.2 GST charged on the supplies received by the Applicant for discharging its CSR obligations is in the course or furtherance of his business and thus eligible for Input Tax Credit under Section 16(1) of the CGST Act.

4.3 The present issue raised by the Applicant is whether the expenses incurred by it on receipt of various supplies, for complying with CSR activities under Companies Act, is in furtherance of business and eligible for ITC in terms of Section 16(1) of the CGST Act.

4.4 According to Section 16(1) of the CGST Act, a registered person shall be entitled to take credit of input tax paid on any supply of goods or services or both that are used or intended to be used in the course or furtherance of business. The relevant portion of Section 16, is reproduced below, for ready reference: -

Eligibility and conditions for taking input tax credit.

16. (1) Every registered person shall, subject to such conditions and restrictions as may be 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.

4.5 It is submitted that any activity which is quite essential for the purpose of running a business or which has been performed with the sole object of furthering the trade or business interest of the assessee is an activity performed 'in the course or furtherance of business'

The term '**Business**' is defined under Section 2(17) of the CGST Act and the same is reproduced below:

(17) "business" includes—

(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;

(d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;

(e) 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;

(f) admission, for a consideration, of persons to any premises;

(g) 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;

4[(h) 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; and]

(i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

4.7

It is submitted that the definition of 'business' is an inclusive one and is wide enough to cover within its scope a broad range of activities. An inclusive definition expands the meaning of the words. The implication of the use of the term 'inclusive' has been explained by the Hon'ble Supreme Court in **CIT vs. Taj Mahal Hotel – [1971] 82 ITR 44** as follows:

"The word 'includes' is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute. When it is so used, these words and phrases must be construed as comprehending not only such things as they signify according to their nature and import, but also those things which the interpretation clause declares that they shall include"

[Emphasis Supplied]

4.8 Further, the Hon'ble Supreme Court in **Mazagon dock Ltd vs CIT and Excess Profit, 1958 (5) TMI 2- SUPREME COURT** had an occasion to examine the scope of word "business" and held as follows:

"14.... The word "business" is, as has often been said, one of the wide import and in fiscal statutes, it must be construed in a broad rather than a restricted sense.....

15. "The word 'business' connotes", it was observed by this court in Narain Swadeshi Weaving Mills Vs Commissioner of Excess Profits Tax, 1955 1 SCR 952 = 1954 (10) TMI 11 - SUPREME COURT "some real, substantial and systematic or organised course of activity or conduct with a set purpose. "The term business" therefore, particularly in fiscal statutes is of wide import."

4.9 As per clause (b) of sub-Section 17, the term 'business' includes an activity or transaction 'in connection with or incidental or ancillary to' the primary business activity. The courts have interpreted 'business' by giving it a wide interpretation under fiscal statutes. Further, by an 'inclusive' definition, the term 'business' under the CGST Act, is further expanded, so a wide interpretation to the term is to be applied in the present case. Therefore, in the present case, any activity performed by the Applicant in connection with or incidental or ancillary to the manufacture of its finished products would fall within the purview of its business. As a result, the CSR activities undertaken by the Applicant becomes an essential part of the business process as a whole and thus are treated to be incurred "in the course of business"

4.10 As stated above and also elaborated in the following paragraphs, the Applicant is under a statutory obligation to comply with the requirement of CSR activity under the Companies Act. In terms of Section 135 (5) of the Companies Act, it is mandatory for a Company (**as applicable to the Applicant in the present case**) to spend in every financial year, at least 2% of the average net profits of the Company made during the 3 preceding financial years. Further, as per the Proviso, if the Company fails to spend any such amount, the Board shall in its report specify the reasons for not spending the amount and unless the unspent amount relates to any ongoing project referred to in sub-section (6), the unspent amount shall be transferred to a fund specified in Schedule VII of the Companies Act, within a period of six months of the expiry of the financial year.

4.11 Section 135 (7) of the Companies Act provides that if a company defaults in complying with the provisions of Section 135(5) or (6) of the Companies Act, they 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, or one crore rupees, whichever is less. Further, 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 or two lakh rupees, whichever is less.

4.12 As the turnover of the Applicant is more than rupees one thousand crores as well as the net profit is more than rupees five crores, during the preceding financial year, it is therefore mandatory for the Applicant to incur expenses attributable to CSR activities in

compliance with the Companies Act and any default/ non-compliance would entail serious penal consequences upon the Applicant and also lead to disruption as well as hindrances in the smooth functioning of its business.

4.13

Accordingly, for complying with the statutory requirement of CSR obligation, the Applicant is incurring expenses for educational services, wherein they are providing funds for running of a school for the underprivileged. They are also incurring expenses on running of dispensary and supply of medicine to patients who may not be able to afford the necessary medical care. Expenses are also being incurred to achieve one of the goals of Swachh Bharat Abhiyaan for providing hygiene and sanitation by making proper toilet facilities available for all and its maintenance/repair thereof etc.

4.14

Therefore, the expenses attributable to CSR activities are being undertaken by the Applicant in order to ensure smooth functioning and maintain continuity in its manufacturing business, otherwise it would be saddled with serious penal consequences due to contravention of Section 135 of the Companies Act.

4.15

In Re: Dwarikesh Sugar Industries Ltd., 2021 (53) GSTL 482 (A.A.R – GST – U.P), the Hon'ble Authority for Advance Ruling, Uttar Pradesh dealt with the same issue as raised by the Applicant in the present application regarding the admissibility of ITC on the expenses incurred by the Company to comply with CSR obligation is in the course or furtherance of business and eligible for ITC under Section 16 of the CGST Act. The Hon'ble Authority, while examining the scope of the phrase "*used or intended to be used in the course or furtherance of business*", relied upon the decision of Hon'ble CESTAT in ***Essel Propack Ltd. v. Commissioner, CGST, Bhiwandi, 2018 (362) ELT 833 (Tri. – Mumbai)*** and held in unequivocal terms that the expenses incurred by the Company in order to comply with requirements of Corporate Social Responsibility under Companies Act, qualify as being '**incurred in the course of business**' and thus entitled to avail ITC in terms of Section 16 of the CGST Act. The relevant portion of the ruling is reproduced below: -

"3. Accordingly, following questions have been posted by the applicant, in his application dated 24-9-2019 (application completed in all aspect received by the Authority on 25-10-2019), before the Authority :-

(i) Whether expenses incurred by the Company in order to comply with requirements of Corporate Social Responsibility (CSR) under the Companies Act, 2013 ('CSR Expenses') qualify as being incurred in the course of business and eligible for Input Tax Credit ('ITC') in terms of the Section 16 of the Central Goods and Services Tax Act, 2017 ('CGST Act, 2017')?

(ii) Whether ITC in relation to CSR activities which have been obligated under a law are restricted under Section 17(5) of CGST Act, 2017? If yes,

(a) Whether free supply of goods as a part of CSR activities is restricted under Section 17(5)(h) of CGST Act, 2017?

(b) Whether goods and services used for construction of school

building which is not capitalized in the books of account is restricted under Section 17(5)(c)/17(5)(d) of CGST Act, 2017?

10. As per Section 135(1) of Companies Act, 2013, "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 during 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."

And as per sub-section (5) of the Section 135 of the Companies Act, 2013, "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 years 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".

Further sub-section (7) of the Section 135 of the Companies Act, 2013, specifies that "If a company contravenes the provisions of sub-section (5) or sub-section (6), the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of such company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both".

Accordingly we observe 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, 2013 and non-compliance of these provisions may lead to business disruptions.

11. Now coming to the question whether CSR activity is to be considered "used or intended to be used in the course or furtherance of business", we observe that Hon'ble CESTAT Mumbai, in the case of *M/s. Essel Propack Ltd. v. Commissioner of CGST, Bhiwandi* [2018 (362) E.L.T. 833 (Tri. - Mumbai)], has observed that :-

"CSR not only holistic approach but integrating core business strategy since same address well being of all stakeholders and not just company's shareholders, also CSR not charity as same having direct bearing on manufacturing activity of company that is largely dependent on smooth supply of raw materials - CSR also augmenting credit rating of company as well as its standing in corporate world - Hence, sustainability of company dependent on CSR without which companies cannot operate

smoothly for long period as they are dependent on various stakeholders to conduct business in economically, socially and environmentally sustainable manner”.

Hon'ble Tribunal has further observed 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.”

12. Further, Hon'ble High Court of Karnataka, in its judgment, in the case of *M/s Commissioner of Central Excise, Bangalore v. Millipore India (P) Ltd.* [2012 (26) S.T.R. 514 (Kar.)], has observed that, “... 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, 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.”

In view of this, we observe 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 said CSR activities are to be treated as incurred “in the course of business”.

13. As regard to the question whether free supply of goods as a part of CSR activities is restricted under Section 17(5)(h) of CGST Act, 2017, we observe that the applicant supplies of furnitures/fittings such as tables, chairs etc. and electrical goods to be used in the school under the CSR activity, free of cost. In this regard, we observe that Section 17 of the CGST Act, 2017 talks about apportionment of credit and blocked credits. Further, 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.” The aforesaid section restricted credit of the goods which were written off or disposed of by way of gift or free samples. Now the moot question before us is to decide whether the furniture/fittings such as tables, chairs etc. and electrical goods supplied by the applicant are to be treated as gift or not. 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, the applicant has also relied upon the Judgment of Hon'ble Supreme Court of India, in the case of *Ku. Sonia Bhatia v. State of UP*, 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 therefor. 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 cease to be a gift."

In view of above discussion, we are in unison with the applicant 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 later is obligatory and regular in nature. 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.

.....

In absence of any restriction on admissibility of ITC under Section 17(5) of the CGST Act and CSR being done in course or in furtherance of business in terms of Section 16, to ensure business continuity, ITC on the CSR expenses incurred by the Applicant as part of their CSR obligation is admissible

5. As per declaration given by the applicant in Form ARA-01, the issue raised by the applicant is neither pending nor decided in any proceedings under any of the provisions of the Act, against the applicant.

6. The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer their comments/views/verification report on the matter and reminder dated 27.10.2022 was sent. . The Deputy Commissioner, CGST & Central Excise Division –III, Ghaziabad vide his letter C. No. 20-CGST/R-11/D-III/Misc/131/2021/965 dated 11.11.2022 offered desired comments/view/verification report on the question raised in the Advance Ruling Application is as under:-

As it is clear that these are merely compliance of Corporate social responsibility under Companies Act, 2013 being an obligation under a law it can't be considered as furtherance of business and the same is not eligible for input tax credit. No such proceeding on the question raised in application is pending or decided in this office as on date.

7. The applicant was granted a personal hearing on 15.11.2022 which was attended by Shri Sanjay Kumar And Shri Atul Gupta, the authorized representative of the applicant during which they reiterated the submissions made in the application of advance ruling.

DISCUSSION AND FINDING

8. At the outset, we would like to make it clear that the provisions of both the CGST Act and the UPGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the UPGST Act. Further for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / UPGST Act would be mentioned as being under the 'CGST Act'.

9. We have gone through the Form GST ARA-01 filed by the applicant and observed that the applicant has ticked following issues on which advance ruling required-

(1) admissibility of input tax credit of tax paid or deemed to have been paid.

At the outset, we find that the issue raised in the application is squarely covered under Section 97(2) of the CGST Act 2017. We therefore, admit the application for consideration on merits.

10. We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by authorised representatives, during the course of personal hearing held on 15-11-22. We also considered the issue involved, on which advance ruling is sought by the applicant, relevant facts & the applicant's interpretation of law.

11. We would like to 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 its 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 sports*

- (ii) *any activity undertaken by the company outside India except for training of Indian 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 fulfillment of any other statutory obligations under any law in force in India;*

12.1 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** pursuance of applicant's normal course of business. Companies must ensure that none of these activities is included in their CSR policy as they have specifically been excluded from the definition of CSR. It has been clarified that any costs incurred as a result of these actions are not eligible for CSR credit.

12.2 The new CSR Rules along with Section 135 of the Act has created a very strict regulatory framework for CSR activities. Earlier the Parliament intended for Section 135 compliance to be voluntary rather than compulsory. Now the CSR activities are independent of normal business activities of the entity requiring separate registration and records for compliance of law. The CSR Policy and projects approved by The Board of Directors are implemented by a CSR Committee which is made public on the website.

The Board must satisfy itself that CSR funds are being utilized in a permitted way according to Rule 4(5). The CSR Committee is required by Rule 5(2) to produce an annual action plan in accordance with the CSR Policy and the Board is required under Rule 9 to compose the CSR committee the CSR Policy and the authorized projects which are publically available on the company's website.

12.3 We find that as per Rule 4 on and after April 1, 2021 Companies can undertake CSR activities only through implementing agencies which are registered with MCA. These implementing agencies will have to file e-form CSR-1 with MCA portal and will receive unique CSR registration number. Rule 7(4) says that the CSR fund may be spent by a company for creation or acquisition of a capital asset which shall be held in the name of only section 8 company or registered public trust or registered society having CSR registration number and cannot be held in the name of the company itself. For existing capital assets compliance within 180 days is required. Thus the corporation cannot directly own this capital asset that was made or purchased with CSR funding. It is also prescribed that the surplus generated by CSR activities will not be included in a company's business profit and will be transferred to the Unspent CSR Account or reinvested in the same project. The company should transfer any unspent CSR funds to any funds listed in Schedule VII of the Act until a fund is specified in Schedule VII in accordance with sections 135(5) and 135(6) of the Act.

13. 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.**

14. 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.

15. The applicant cited case laws: 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 C.Ex, 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, other case laws cited by the applicant are not identical in this issue and 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.

16. In view of the above discussions, we, both the members pass the following ruling-


RULING

(a) Whether the Applicant is entitled to avail Input Tax Credit of the GST paid on various services/ expenses incurred towards discharging its CSR obligation, can be considered as being in course or furtherance of business in terms of Section 16(1) of the CGST Act, 2017 r/w UPGST Act, 2017?

Answer: 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.

17. This ruling is valid only within the jurisdiction of Authority for Advance Ruling Uttar Pradesh and subject to the provisions under Section 103(2) of the CGST Act, 2017 until and unless declared void under Section 104(1) of the Act.


(Vivek Arya)
Member of Authority for Advance
Ruling


(Rajendra Kumar)
Member of Authority for Advance
Ruling

To,

SHRIRAM PISTONS AND RINGS LIMITED,
A-4 to A-7, B-8/1 & 2, B 9 & 10, Industrial Area III,
Meerut Road, Ghaziabad- 201 003 (U.P.)

AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH

Copy to –

1. The Chief Commissioner, CGST & Central Excise, Lucknow, Member, Appellate Authority of Advance Ruling.
2. The Commissioner, Commercial Tax, Uttar Pradesh, Member, Appellate Authority of Advance Ruling.
3. The Commissioner, CGST & C. Ex, C.G.O. Complex-II, Kamla Nehru Nagar, Near Hapur Chungi, Ghaziabad. - 201002.
4. The Deputy/Assistant Commissioner, CGST & Central Excise, Division-III, sc-106, C Block, Shastri Nagar, Ghaziabad. - 201002.
5. Through the Additional Commissioner, *Gur-1, Ghaziabad Zone-I, Ghaziabad*, Uttar Pradesh to jurisdictional tax assessing officers.

Note: An Appeal against this advance ruling order lies before the Uttar Pradesh Appellate Authority for Advance Ruling for Goods and Service Tax, 4, Vibhuti Khand, Gomti Nagar, Lucknow – 226010, within 30 days from the date of service of this order.