

THE CHAMBER OF TAX CONSULTANTS

INDIRECT TAX STUDY CIRCLE MEETING

1ST SEPTEMBER 2021

CASE STUDIES ON ISSUES IN BLOCKED CREDITS

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1. Panda Ltd., authorized car dealer of “Kiya” brand cars, has decided to renovate its existing car showroom. For this purpose, it has invited quotation from a contractor. The contractor has quoted a price of Rs. 1,25,00,000/-. In the quotation, the contractor has given an item-wise price break-up of the following activities:
 - a. Demolition and dismantling works
 - b. Construction of concrete partitioning walls so as to make cabins for its senior management.
 - c. Centralised Air Conditioning System (compressor fixed to the floor by way of foundation) and carrying out incidental ducting and piping activities.
 - d. Cubicles for providing seating space to its employees.
 - e. Vitrified tile flooring
 - f. Luster paint on walls
 - g. Concealed electrical works
 - h. Outdoor lighting and switches
 - i. Carpentry works including lounge table, chairs, conference tables, door frames, etc.
 - j. Plumbing and sanitary works
 - k. Data and Networking
 - l. Fire Alarm & Detection
 - m. Fire Fighting System
 - n. Access Control System

- o. CCTV
- p. TV & HDMI (Only)

The entire cost will be capitalized in books of accounts. Panda has examined Section 17(5) of the CGST Act, 2017 dealing with blocked credits but is unable to form any view regarding availability of ITC on the above expenditures. The contractor is of the view that entire activity is a composite supply of works contract service in relation to immovable property and HSN 9954 should be shown in invoice. The contract is not yet finalized. Your advice is sought.

Take note of following legal provisions:

- a. Section 2(30) and 2(74) of CGST Act
- b. Section 2(119) of CGST Act
- c. Section 17(5)(c) and 17(5)(d) of CGST Act



- 2. Seva Limited, a company incorporated under the Companies Act, 2013, is engaged in the business of supplying irrigation equipment and solutions. As per Companies Act, 2013, it has to spend specific amount of profits towards Corporate Social Responsibility (“CSR”) activities.

Accordingly, in furtherance of its CSR obligations, it incurred expenses worth INR 2 Crores in relation to floor training to underprivileged children enrolled with a

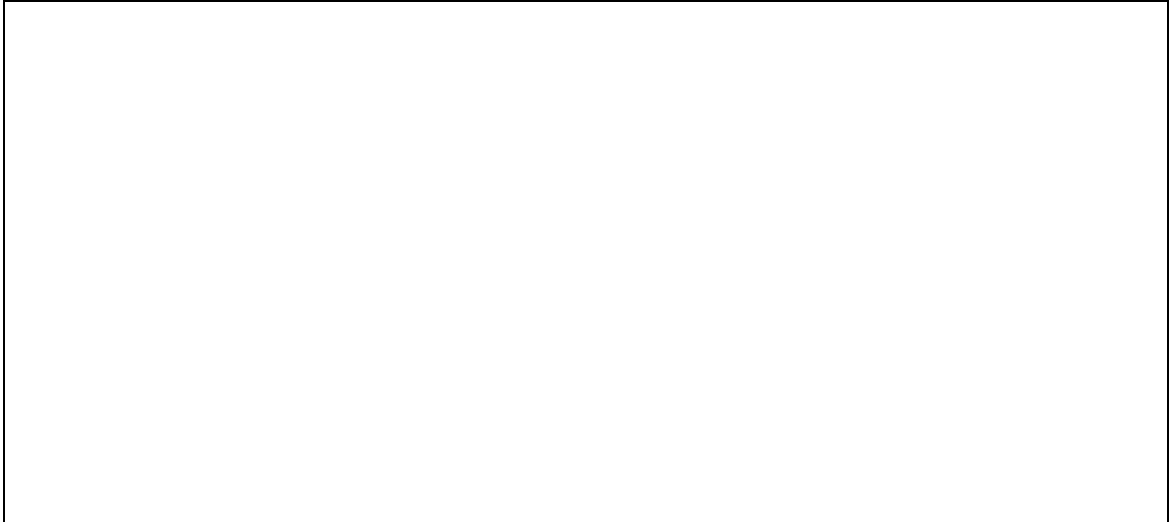
charitable organization. These expenses were towards providing proper uniforms and equipment to the children, supervision of children, canteen services etc. In light of the factual matrix in this case, Seva Limited seeks to understand the following:

Since CSR is carried out by Seva Limited as a part of Companies Act requirement in terms of which 2% of the average net profits of the company made during the three immediately preceding financial years is to be spent on CSR activities, can such CSR be considered as activity carried out in the course or in furtherance of business?

- a. Whether Seva Limited is eligible to avail and utilize ITC towards expenses incurred in relation to the floor training to the underprivileged children being expenses incurred in the course or furtherance of business? The nature of expenses being Uniforms, Training expenses, catering, etc.
- b. Would your answer change in any manner, if the actual expenditure incurred is more than 2% of the average net profits of the company made during the three immediately preceding financial years?

Take note of following legal provisions:

- Section 17(1) of the CGST Act provides for reversal of credit availed on **non-business activities**.
- Section 135 of the Companies Act, 2013 requires Companies with net worth of Rs. 500 crore or turnover of Rs. 1000 crore or a net profit of Rs. 5 crore or more to spend at least 2% of the average net profits of the company made during the three immediately preceding financial years.
- Companies (Corporate Social Responsibility Policy) Rules, 2014 clarifies that CSR spends **exclude** 'activities undertaken in pursuance of the normal course of business of the Company'
- Section 17(5) of the CGST Act does not restrict credit on CSR activities specifically.
- Section 37 of the Income Tax Act, 1961 specifically disallows claiming of deduction of expenses incurred towards CSR as business expenditure.
- Analyze definition of business under Section 2(17) of CGST Act, 2017.



3. A TV serial production house is producing a TV series for a TV channel. The copyright in the program will be of the TV channel. The said TV producers have availed the services of make-up artist to undertake make-up of various artist taking part in the shooting of the program. The TV producer wants to know whether it can avail the credit of GST charged by the Make-up man and whether the said expenses can be considered as eligible for credit in view of the fact that the same is part of the composite supply to the TV channel?



4. A company has incurred some expenses for ensuring hygiene and complying with safety standards on account of COVID pandemic. Analyze whether GST paid on following expenses can be claimed as ITC:
- a. Masks/ Sanitizers for office staff use.
 - b. Masks/ Sanitizers for visitors

- c. Vaccines purchased from pharma company which will be inoculated by the in-house paramedic team to staff & their family members
- d. Mediclaim insurance.

5. A company celebrated its 100th Anniversary in the month of April 2021 and for this purpose, the company gifted gold coins (5 gms coin, costing around Rs. 15,000/- per coin) to all its employees. The company has availed credit on such gold purchase and the department has issued show cause notice stating the company cannot avail credit on gold as they are not dealers in gold. What would be the position if the expenditure towards Gold is treated as part of perquisites in Income Tax and included in Salary cost of the respective employee? Whether answer will be different if the Offer letter with the employee specifies that Gold Coin will be given to employee based on performance?

6. ABC Ltd. has a trading division whereby it is engaged in the business of trading of packing materials. It supplies its packing materials to its customers located across India. The trading division avails ITC on packing materials, it procures from the manufacturers. During the month of June 2021, the division sent a truckload of packing materials to Pune, by issuing invoice and necessary e-Way bills, for which the customer paid the consideration in advance. However, due to heavy rains, portion of the packing materials were damaged and became non usable by the customer and he returned the same. To the extent of the returned quantity, the trading division claimed insurance on the damaged goods, which claim was accepted to the extent of 75% of the value of damaged goods. Further, the trading division also sent back the damaged goods to the manufacturer who procured the same at a 25% of the sale price on which GST was also paid, as manufacturer could use the same in manufacturing process. Discuss ITC implications vis-à-vis the trader and buyer:

- a. Transfer of property in goods has not taken place at the time of destruction of goods
- b. Transfer of property in goods has taken place at the time of destruction of goods
- c. Because insurance amounts have been received which includes input tax component, can they claim ITC?
- d. If insurance amounts have been received without input tax component?