

# Contrary rulings on ITC in CSR cases create confusion

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Contrary rulings on input tax credit eligibility on CSR activities by GST authorities in different states have left the traders confused.

While the Authority of Advance Ruling for Kerala state has ruled that distributing goods free of cost under CSR activities are not eligible for input tax credit, the Uttar Pradesh authority found that they are eligible for ITC.

"Expenses incurred by the company in order to comply with requirements of CSR under Companies Act, qualify as being incurred in the course of business and are eligible for input tax credit in terms of Section 16 of the Central Goods and Services Tax 2017," said the AAR of UP.

The ruling was given in a recent case in which a sugar products manufacturer had undertaken construction of school buildings and laborato-



ries, supply of furniture and electrical goods under CSR activities. The company said it is compulsorily required to undertake CSR activities to run the business. As a result, they become an integral part of the business process and thus are treated to be incurred "in the course of business".

The authority also observed that a clear distinction needs to be drawn between goods given as gifts and those provided as a part of CSR activities. While the former is voluntary and occasional, the latter is obligatory and regular in nature.

However, in a similar case that came up in Kerala last month, the

state-level authority gave a contrary order. A dealer of electrical goods, cables and pipes had supplied electrical items free of cost to the Kerala State Electricity Board to reinstate connectivity in the state's flood-hit areas.

The authority ruled that since the dealer supplied electrical items under CSR expenses on a free basis, without collecting any money, input tax credit will not be applicable to such transactions.

"The contrary AARs on whether ITC shall be eligible on the CSR spent made by the companies has created confusion among the industry players. Considering that most companies donate free goods under their CSR agenda to ensure compliance under the Companies Act and is clearly a business expense, the government should provide explicit clarity that ITC would be available in case of procurement of said goods for CSR," said Abhishek Jain, tax partner of EY.