

DESAI SAKSENA & ASSOCIATES

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Friday Tax Alert

From:

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ITC NOT ADMISSIBLE ON EXPENDITURE INCURRED FOR BUYBACK OF SHARES: AAR, GUJRAT

Introduction

The Authority for Advance Ruling, Gujarat in the case of M/s. Gujarat Narmada Valley Fertilizers & Chemicals Limited vide Order No. GUJ/GAAR/R/2025/11 (In Application No Advance Ruling/SGST&CGST/2024/AR/22) dated 25.03.2025, has ruled that ITC is not admissible on the expenditure incurred for buyback of shares. The applicant must reverse ITC on common inputs/input services used in connection with buyback expenses.

Facts of the case:

1. In this case, the Applicant is a public limited company listed on the stock exchange that manufactures fertilizers and chemicals. The company initiated a share buyback program as part of a capital restructuring exercise under a Government of Gujarat resolution.
2. The applicant seeks clarification on whether expenses incurred in relation to the buyback of shares qualify for Input Tax Credit (ITC) under GST law. The Applicant submitted that the Buyback of shares is in the Course or Furtherance of Business as the buyback program serves business purposes, such as strengthening financial standing, enhancing shareholder value, reducing capital costs, and improving market perception.
3. Also, under Section 16(1) of the CGST Act, 2017, ITC is allowed on goods/services used in the “course or furtherance of business.” Further, the applicant argues that the buyback aligns with the definition of “business” under Section 2(17) of the CGST Act, which includes incidental or ancillary activities to the primary business operations.
4. The various expenses, such as **Professional fees, legal fees, advisory fees, advertisement costs, and other charges related to the buyback**, are directly linked to the company’s business objectives. Since these expenses are used for financial structuring, they should qualify as input services under Section 2(60) of the CGST Act. The Applicant further presented their interpretation of Section 17(3) of the CGST Act, 2017, and submitted that buyback is not a sale or purchase transaction, as shares repurchased are cancelled.
5. The Applicant referred to the judgment in the **case of Coca-Cola India (P.) Ltd. (2009) [22] STT 130 (BOM)**, arguing that expenses incurred for business enhancement should be eligible for ITC.

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AAR Ruling:

1. The AAR stated that in accordance with section 2(52) and Section 2(102) i.e. definition of 'goods' and 'services' respectively, securities are neither good nor services. Since GST applies only to goods and services, transactions involving securities are outside the purview of GST. Buyback of shares is a transaction in securities and is not subject to GST, making ITC inapplicable.
2. Further, the AAR in accordance with the provisions of Section 17(3), states that transactions in securities are exempt supplies. Rules 42 and 43 require reversal of ITC for input services used for both taxable and exempt supplies. Since buyback expenses are directly related to securities, they fall under the exempt category, and ITC is not permissible.
3. With respect to the contention of the applicant that buyback should be treated the same as the issuance of fresh shares was rejected. The AAR stated that even if issuance of shares is considered a business activity, securities transactions remain outside GST, and ITC is not available for either issuance or buyback.
4. The AAR ruled **that transactions in securities, including share buybacks, fall outside the GST framework**. Since securities are neither goods nor services, ITC on expenses related to buyback is not available. Moreover, businesses engaging in share buybacks must proportionately reverse ITC on common input services.

ITC CANNOT BE DENIED DUE TO WRONG ADDRESS AND GSTN ON INVOICES

Introduction:

The Hon'ble Delhi High Court in the case of B Braun Medical India (P.) Ltd. v. Union of India [W.P.(C) 114 of 2025 dated March 12, 2025] set aside the order wherein a demand order was passed on the Assessee was claiming excess Input Tax Credit ("ITC"), where invoices were raised by the supplier for purchase of products inadvertently at a different address and GSTN.

Facts of the case:

1. M/s B Braun Medical India (P.) Ltd. ("the Petitioner") was engaged in the sale of various pharmaceutical products and medical devices. The Petitioner had purchased a large

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quantum of products from M/s. Ahlcon Parenterals (India) Limited ("Ahlcon"), on the basis of various purchase orders.

2. It is stated that the invoices for the said products were raised by Ahlcon on the Petitioner, however, the said invoices inadvertently reflected the Bombay address and Bombay GSTN of the Petitioner, instead of the Delhi GSTN number. This has led to the impugned demand.
3. The Petitioner relied upon the purchase orders and invoices to submit that, the Petitioner is clearly a Delhi-based company, and the incorrect reflection of the Petitioner's Bombay GSTN on the invoices was merely an error by the supplier. However, the Department had taken a stand that the Petitioner is not entitled to the ITC and has accordingly passed the Order dated June 28, 2024 ("the Impugned Order"). Hence, aggrieved by the Impugned Order, the Petitioner filed the present writ petition.

Decision of the Court:

1. Opined that the Petitioner's name is correctly mentioned in the invoices; however, the wrong GST number, i.e., of the Bombay office, has been mentioned. On this issue, there is no stand taken by the Department in the counter-affidavit.
2. On a direct query being put to the Id. Standing Counsel for the Respondent, he fairly admitted that no other entity has also claimed at ITC on these purchases. The only basis for rejecting the ITC is the mention of the Bombay office GSTN instead of the Delhi office GSTN. Substantial loss would be caused to the Petitioner if the credit is not granted for such a small error on behalf of the supplier.
3. Observed that, if the correction in the invoices is permitted and the Petitioner is provided the ITC, the challenge to the constitutional validity shall not be pressed by the Petitioner. Hence, the Impugned Order rejecting ITC was set aside. Hence, the petition was disposed off.