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ITC on IPO expenses available for fresh issue of shares but not for Offer for Sale by existing shareholders

The Telangana AAR in the matter of *M/s. Sai Silks Kalamandir Limited [A.R.Com/21/2024, TS AAR Order No. 10/2026 dated September 18, 2026]* ruled that Input Tax Credit (“ITC”) on expenses incurred in the course of an Initial Public Offering (“IPO”) relating to the fresh issue of shares is eligible to be claimed when the net proceeds are utilised for furtherance of business, as such expenses have an indirect but substantial nexus with the business and are not blocked under Section 17(5) of the Central Goods and Services Tax Act, 2017 (“the CGST Act”). However, ITC on the portion of expenses relating to the Offer for Sale (“OFS”) by existing shareholders is not eligible, as the proceeds thereof do not accrue to the company.

Facts:

M/s. Sai Silks Kalamandir Limited (“the Applicant”) is a public limited company engaged in the retail of ethnic and affordable fashion clothing under the brands Kalamandir, Kancheepuram Varamahalakshmi Silks, Brand Mandir and KLM Fashion Mall, with stores across Telangana, Karnataka, Andhra Pradesh and Tamil Nadu.

The Applicant offered its shares to the public through an IPO of 5,40,99,027 equity shares at a price of Rs. 222 per share aggregating to Rs. 12,009.98 million. The offer was a combined offer comprising a fresh issue of 2,70,27,027 equity shares aggregating to Rs. 6,000 million and an OFS of 2,70,72,000 equity shares aggregating to Rs. 6,009.98 million by the promoter and promoter group selling shareholders.

The net proceeds of the offer were earmarked for funding capital expenditure towards setting up 30 new stores and two warehouses, funding working capital requirements, repayment or pre-payment of certain borrowings and general corporate purposes. The offer related expenses in relation to the fresh issue, such as merchant banker fees, legal consultancy,

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registrar fees, underwriting commission, advertising and listing fees, were estimated at Rs. 33.763 crore.

The Applicant contended that the funds generated through the IPO are utilised for furthering the operations of the company, such as expanding capacity, investing in new technologies, entering new markets and paying off existing debts to strengthen its financial position, and therefore the GST paid on such expenses is eligible as ITC. Accordingly, the Applicant filed an application for advance ruling under Section 97(1) of the Telangana Goods and Services Tax Act, 2017.

Issue:

Whether ITC on expenses incurred in the course of an IPO (fresh issue) by the Applicant is eligible under Section 16 of the CGST Act?

Held:

The Telangana AAR in **TS AAR Order No. 10/2026** held as under:

- **Observed that**, the instant IPO falls under the category of a combined offer, i.e., a fresh issue of shares by the company together with an OFS by the existing shareholders. In a fresh issue the proceeds go directly to the company, whereas in an OFS the company does not receive any proceeds and only the selling shareholders benefit.
- **Observed that**, the expenses relatable to the OFS by the existing shareholders cannot be deemed to be part of the business of the company. Therefore, though the OFS may be facilitated by the company, the GST charged on such expenses is not eligible for ITC in the hands of the company.
- **Noted that**, the expression “in the course of business” covers activities forming part of or occurring during the normal conduct of business, whereas “in furtherance of

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business” is a wider expression covering activities that promote, facilitate, support or advance the business even though they do not form part of the principal business activity. It is a misconception that an inward supply must be directly related to the goods or services sold by the taxpayer.

- **Noted that**, Section 16(1) of the CGST Act deliberately uses the wider expression “in the course or furtherance of business” and does not require the input to be directly incorporated into the output supply. Further, IPO expenses are not one of the blocked categories specified in Section 17(5) of the CGST Act.
- **Noted that**, the IPO services facilitate the company’s access to capital, which in turn facilitates its business activities, and thus there is an indirect but substantial nexus with furtherance of business. Reliance was placed on the judgment of the Hon’ble Supreme Court in Safari Retreats and the decision of the CESTAT, Bengaluru in Kernex Microsystems (India) Ltd.
- **Held that**, ITC on expenses incurred in the course of the IPO (fresh issue) is eligible to be claimed when the net proceeds are utilised for furtherance of business. However, ITC on the portion of expenses incurred towards the OFS by the existing shareholders, the proceeds of which do not accrue to the company, is not eligible to be claimed.

Our Comments:

Relevant provisions: Section 16(1) of the CGST Act entitles every registered person 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”. Section 2(17) of the CGST Act defines “business” in an inclusive manner to cover, inter alia, any activity or transaction in connection with or incidental or ancillary to the main trade or commerce. Section 17(5) of the CGST Act lists the specific inward supplies on which ITC is blocked, and services such as

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merchant banking, legal, registrar, underwriting, advertising and listing services availed for an IPO do not find place therein.

The ruling is a welcome one for companies tapping the capital market, since the department has in several cases questioned the credit on IPO expenses on the reasoning that such services are used for issuing shares and not for making taxable outward supplies. The AAR has rightly applied the “furtherance of business” test, which looks at the purpose for which the capital is raised and not at a one-to-one correlation with the output supply.

Pari materia judgments: The Hon’ble Supreme Court in *Chief Commissioner of Central Goods and Service Tax v. M/s. Safari Retreats Pvt. Ltd. [Civil Appeal No. 2948 of 2023 dated October 03, 2024]* recognised that Section 16(1) of the CGST Act is the enabling provision conferring entitlement to ITC on supplies used or intended to be used in the course or furtherance of business, while Section 17(5) carves out specific exceptions to that entitlement.

The Hon’ble Bombay High Court in *Coca Cola India Pvt. Ltd. v. Commissioner of Central Excise, Pune-III* [2009 (242) E.L.T. 168 (Bom.) dated August 26, 2009] held, in the context of the definition of “input service” under Rule 2(l) of the CENVAT Credit Rules, 2004, that credit is available on services used in relation to the business of the assessee and that the requirement is of integration with the business and not a direct nexus with the final product. The same view was followed in *Commissioner of Central Excise, Nagpur v. Ultratech Cement Ltd.* [2010 (260) E.L.T. 369 (Bom.) dated October 25, 2010], wherein it was held that services having a nexus with the business of manufacturing the final products qualify as input services.

Specifically on IPO expenses, the CESTAT, Bengaluru in *M/s. Kernex Microsystems (India) Ltd. v. CCE, Cus. & ST* [(2016) 42 S.T.R. 533 (Tri. - Bang.)], relied upon by the AAR, took the view that services availed in connection with floating an IPO for expansion of the manufacturing plant fall within the inclusive part of the definition of “input service”.

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Contrary view and points of caution: The Hon'ble Supreme Court in *Maruti Suzuki Ltd. v. Commissioner of Central Excise, Delhi-III* [2009 (240) E.L.T. 641 (S.C.) dated August 17, 2009] had insisted on a nexus between the input and the manufacture of the final product for availing credit. The said judgment, however, was rendered in the context of "inputs" used in or in relation to manufacture under the erstwhile CENVAT regime, whereas Section 16(1) of the CGST Act uses the much wider expression "in the course or furtherance of business".

More importantly, the AAR has not examined Section 17(2) and Section 17(3) of the CGST Act. Securities are excluded from the definitions of "goods" under Section 2(52) and "services" under Section 2(102) of the CGST Act. However, the Explanation to Section 17(3) of the CGST Act provides that the value of exempt supply shall include "transactions in securities", and the Explanation to Chapter V of the Central Goods and Services Tax Rules, 2017 ("the CGST Rules") provides that the value of security shall be taken as one per cent of the sale value of such security. The department may, therefore, still seek proportionate reversal of common credit under Rule 42 and Rule 43 of the CGST Rules. A good argument is available that a fresh issue of shares is a creation of securities and not a "sale" of securities, and hence there is no "sale value" to be reckoned for reversal. This aspect remains untested and companies should take a considered position on the same.

As regards the OFS portion, the denial of credit is in line with the principle that the sale of shares by the promoters is their own activity and not the business of the company. In practice, the offer expenses are shared between the company and the selling shareholders in the ratio of the shares offered by each, and the selling shareholders reimburse their share to the company in terms of Section 28(3) of the Companies Act, 2013. The ruling does not lay down the basis of apportionment, nor does it deal with the GST treatment of such recovery from the selling shareholders. Companies should ensure that the offer agreement and the invoices of the intermediaries clearly reflect the split between the fresh issue and the OFS.

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Further, the eligibility has been made conditional upon the net proceeds being “utilised for furtherance of business”. Companies should, therefore, maintain proper documentation of the objects of the issue and the actual utilisation of the proceeds, including the monitoring agency reports, to substantiate the claim. It may also be noted that in terms of Section 103 of the CGST Act, an advance ruling is binding only on the applicant and the jurisdictional officer in respect of the applicant. Nevertheless, the ruling carries persuasive value and may be relied upon by similarly placed taxpayers in replying to notices proposing denial of ITC on IPO expenses.

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