



NITYA'S Outlook

Issue 3 | Input Tax Credit on drinking water

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Dear Reader,

The admissibility of input tax credit ('ITC') on drinking water consumed at workplaces like factory, offices etc. has been a debatable issue under GST. In this regard, please find 'NITYA's Outlook - Issue 3' on eligibility of ITC on drinking water.

As per Section 16(1) of the Central Goods and Services Tax Act, 2017 ('CGST Act'), every registered person is entitled to take ITC of tax paid on inward supply of goods / services, used in course or furtherance of business. Section 17(5)(b) of the CGST Act restricts the entitlement of ITC on beverages.

Given the above stated restriction, ITC on drinking water will not be available in case the same qualifies as 'beverage'. Based on a perusal of various judicial precedents and lexicons, drinking water does not constitute a beverage. Hence, ITC on drinking water is available.

In addition to the above, it is noteworthy that the CGST Amendment Act, 2018 ('Amendment Act') has inserted a proviso to Section 17(5)(b) of the CGST Act. By virtue of this amendment, an employer is entitled to claim ITC on goods / services which it is statutorily obligated to provide to its employees. Therefore, if an employer is statutorily obligated to make provision of drinking water for its employees, it will be entitled to claim ITC on the same.

For illustrative purposes, the following statutes *inter alia* specifically mandate the employer to make suitable arrangements for drinking water for employees:

- Factories Act, 1948
- Delhi Shops & Establishments Act, 1954
- Plantations Labour Act, 1951
- The Beedi and Cigar Workers (Conditions of Employment) Act, 1966
- The Building and other Construction Workers (regulation of employment and conditions of service) Act, 1996

Thus, the employers, who run workplaces governed by statutes mandating making arrangements for drinking water, are entitled to claim ITC in respect of drinking water by virtue of proviso to Section 17(5) of the CGST Act.

(Pertinent to note that proviso to Section 17(5) of CGST Act is not in force and shall be effective on the date as notified by the government.)

Trust you will find the above useful. In case of any clarification, please feel free to revert.

Regards,

Team NITYA



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