

# TAX INFO

*Dated 13/12/2021*

Latest update on GST Law: Information regarding **No ITC On Activities To Be Undertaken Under The Extension Project** as given in **Ruling by AAR-Uttar Pradesh.**

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<b>Name of Applicant</b>	TianyinWorldtech India Private Limited
<b>Authority</b>	GST AAR Uttar Pradesh
<b>Date of Ruling</b>	28/06/2021
<b>Ruling No.</b>	UP ADRG 80/2021

## **Brief Facts of the Case:**

The applicant is engaged in the manufacturing of Charger of Mobile Phone & its Parts or Sub-Parts. The Applicant has purchased an old Factory in Noida for Expansion of their business and in the said factory; applicant shall also make new construction to setup plant and machinery and he will use it for Manufacturing & other related activities. The activities to be undertaken under the Extension Project can be broadly bifurcated into the following categories:

- i. Building Works;
- ii. Electrical Works
- iii. Air Condition works
- iv. Fire Protection Work
- v. Mechanical Works; and
- vi. Dismantling Works

## **Questions on which the Ruling is Sought:**

Whether ITC shall be available for the activities to be undertaken under the Extension Project mentioned above?

## **Contention of the Applicant:**

When a works contract is for the construction of plant and machinery, the ITC of the tax paid to the works contractor would be available to the recipient, whatever is the business of the recipient. This is because works contract in respect of plant and machinery comes within the exclusion clause of the negative list as per Section 17(5) and ITC would be available when used in the course or furtherance of business.

**Further as per the proviso of section 17(5) “Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide to its employees under any law for the time being in force.”**

And the Applicant believes that ITC in Relation to Building Work, Electrical Work, Air Condition Work, Fire Protection Work, and Mechanical Work should be allowed as that is for Production Area of the Manufacturing Factory & some work is obligatory for an employer to provide to its employee under the law.

### **Contention of the Department:**

That the ITC in terms of the nature of Works Contract services and construction of Immovable property, **other than plant and Machinery is not available** to the extent of capitalization to the said immovable property. The list of activities provided by the taxpayer such as Building Work, Electrical Work, Air Condition Work and Mechanical Works falls under the category of Construction service as defined in the explanation to the clause (c) & (d) of the section 17(5) of the CGST Act 2017 and hence not eligible for the Input tax credit. Further, some of the activities are in relation to the production floor but since they fall under civil structures, hence, ITC on these services are also not available in terms of the definition of the Plant & Machinery as provided under Explanation to the section 17(5) of the Act.

### **Findings and Ruling:**

Clause (c) and (d) of section 17(5) restricts ITC in respect of works contract services and goods or services used towards construction of immovable property. **However, both the clauses clearly exclude 'plant and machinery'. This means that the ITC restrictions are applicable only in case of immovable property. These restrictions are not applicable on plant and machinery.**

**"plant and machinery" means** apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—

- i. land, building or any other civil structures;
- ii. telecommunication towers; and
- iii. pipelines laid outside the factory premises"

According to the provisions of Sec. 17(5) read with the explanation to it, credit of civil structure is covered under blocked credit. Clause (c) and (d) of section 17(5) restricts ITC in respect of works Contract services and goods or services used towards construction of immovable property. **As such, input tax credit (ITC) of GST paid in relation to building or any other civil structure is not available.**

**The activities to be undertaken under the Extension Project were broadly bifurcated into the following categories:**

- i. **Building Works;**
- ii. **Electrical Works**
- iii. **Air Condition works**
- iv. **Fire Protection Work**
- v. **Mechanical Works; and**
- vi. **Dismantling Works**

**ITC shall not be available for any of these activities to be undertaken under the Extension Project.**

**Suresh Aggarwal, Advocate**

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