

**AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX
UTTAR PRADESH
4, Vibhuti Khand, Gomti Nagar, Lucknow-**

ADVANCE RULING NO. UP ADRG 80 /2021
PRESENT:

DATED 28-06-2021

1. Shri Abhishek Chauhan

Additional Commissioner, Central Goods and Service Tax
Audit Commissionerate, Lucknow

.... Member (Central Tax)

2. Shri Vivek Arya

Joint Commissioner, State Goods and Service Tax

.....Member (State Tax)

1.	Name of the Applicant	M/s TIANYIN WORLDTECH INDIA PRIVATE LIMITED D-225, GF&FF, Sector-63, Noida -201301
2.	GSTIN or User ID	09AAFCT4154Q1ZO
3.	Date of filing of Form GST ARA-01	04.03.2021
4.	Represented by	Mr. Shobhit Goel (Advocate.)
5.	Jurisdictional Authority-Centre	Range-12
6.	Jurisdictional Authority-State	Noida, Sector-10
7.	Whether the payment of fees discharged and if yes, the amount CIN	Yes ICIC21020900454849

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017 & UNDER SECTION 98
(4) OF THE UPGST ACT, 2017**

1. M/s **TIANYIN WORLDTECH INDIA PRIVATE LIMITED**, D-225, GF&FF, Sector-63, Noida -201301 (here in after referred to as the applicant) is a registered assessee under GST having GSTN: 09AAFCT4154Q1ZO.

2. The applicant has sought advance ruling on following question-

(1) The Applicant has approached the authority of advance ruling to determine the admissibility of Input Tax Credit of Tax paid on cost proposed to be incurred in relation to activity mentioned in Annexure attached with the application.

3. As per declaration given by the applicant in Form ARA-01, the issue raised by the applicant is neither pending nor decided in any proceedings under any of the provisions of the Act, against the applicant.

4. As per statement of facts submitted by the applicant-

(i) The Applicant is engaged in the manufacturing of Charger of Mobile Phone & its Parts or Sub-Parts.

(ii) The Applicant has purchased an old Factory situated at B-204, Phase-II, Noida for Expansion their business and in said factory applicant shall also make new construction to setup plant and machinery.

(iii) The Applicant will use aforesaid factory for Manufacturing & other related activities.

(iv) The list of activities and nature of cost proposed to be undertaken/incurred under the above said property are provided as under:

S. No.	Major Head	Sub-Head	Whether ITC Available on below Activity
1.	Building Work		1. Cement, iron, dust, sand, bricks, bonding chemicals, concrete used in building for construction and repairing of production floors. 2. ITC on labour contractor payment (used in making of production area.) 3. Painting of building. 4. False ceiling and lights. 5. Wire Fitting on Production Floor. 6. Furniture & Fixture for Production Floor. 7. Furniture & Fixture for office. 8. Tiles used in production area.
2.	Electrical Work	Sub-Station Work (Including Wiring)	1. The Sub-Station is used for electricity supply for Production/utility for Production.
		DG Set Power Supply System (Including Wiring)	1. The DG Set power supply system is used for electricity back up for Production/utility for Production.
		Lighting System Work (Including Wiring)	1. The lighting system work are used for illuminating the production Floor, in absence of which production would not be possible.
		Emergency and Exit Light Fixtures (Including Wiring)	1. Emergency and Exit light fixtures are installed on the production floor to be used in the case of emergency Operation.
		Telephone System (Including Wiring)	1. Intercom and external communication systems is a basic necessity to facilitate communication within and outside the factory premises.
		LAN System	1. LAN connectivity of computers on production floor with main server used for configuring commands for operation of machine.
		Fire Alarm System	1. Fire Alarm system of Production floor.
		Dismantling Work	Demolishing of irrelevant area.

3.	Air Condition Work	Air-Conditioning Equipment's	1. Heating, ventilation and air conditioning equipment on the production floor is required to adhere to cleanroom environment conditions.
		Air-Conditioning Piping work & Accessories	
		Ventilation Fans	
		Air-Distribution System	
		Automatic Control System	
		Dismantling Work	
4.	Fire Protection Work	Internal Fire Hydrant System	1. Equipment or apparatus used for fire protection on the production floor.
		Sprinkler Work	
		Extinguisher	
		Fire Documentation	
		Dismantling Work	
5.	Mechanical Work	Plumbing (Internal and Domestic water distribution supply System)	1. Internal and Domestic water distribution supply System is used to provide drinking water and water for sanitation to the employee working in the production floor.
		External Sewage System	1. The External sewage system is partly used for disposal of sewage generated during the production process.
		Internal Sewer and venting system	1. The Internal Sewer and venting system is used for disposal of sewage generated during the production process.
		Gardening water supply system	1. The Gardening water supply system is used to supply water to the garden of the factory.
		Sanitary Ware and CP Fitting	1. Before entering the production floor every worker is required to pass through a cleanroom where he is required to wear the appropriate protective gear and wash hand for sanitation purpose.
		Dismantling Work	

5. The applicant has submitted their interpretation of law as under-

- (i) According to Section 16 of the CGST Act every registered person is entitled to input tax credit, subject to conditions and restrictions specified in rules, if the person made purchases to use or intended to be used in the course of or furtherance of his business.
- (ii) But Section 17(5) stops the registered person to avail input tax credit on such supplies which have been specified under this section 17 (5) of the CGST Act.

- (iii) Section 17(5)(c) and 17(5)(d) blocks input tax credit relating to supplies of Works Contract and goods or services or both received for construction of an immovable property.
- (iv) Section 17(5)(c) says that works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;
- (v) Section 17(5)(d) says that goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation — For the purposes of clauses (c) and (d), the expression “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

- (vi) On perusal of the above provisions it is clear that ITC on works contract is available if such service is to be used for plant and machinery.
- (vii) Plant and Machinery in certain cases when affixed permanently to the earth would constitute immovable property. 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 and ITC would be available when used in the course or furtherance of business.
- (viii) Further 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.”*
- (ix) On the Basis of above submission, the Applicant believes that input tax credit in Relation to Building Work, Electrical Work, Air Condition Work, Fire Protection Work, 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. For the time being in force.

6. The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer their comments/views/verification report on the matter. The Assistant Commissioner, CGST Div III, Noida vide his letter C.No.V(30)/Tech/Div-III/N/Misc/30/19-20/Pt dated 20.04.2021 has submitted that it appears that the Input tax credit 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 *ibid*. As regards, the fire extinguisher is concerned the ITC appears to be available, as there are no bars put up on the same under section 17(5) of the Act.

7. The applicant was granted a personal hearing on 31.05.2021 which was attended by Shri Shobhit Goel, Advocate/Authorized representative. During personal hearing, he reiterated the submissions made in the application of advance ruling and requested to decide the case accordingly.

DISCUSSION AND FINDING

8. At the outset, we would like to make it clear that the provisions of both the CGST Act and the UPGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the UPGST Act. Further for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / UPGST Act would be mentioned as being under the 'CGST Act'.

9. We have gone through the submissions made by the applicant and have examined the explanation submitted by them. At the outset, we find that the issue raised in the application is squarely covered under Section 97(2)(a) of the CGST Act 2017 being a matter related to classification of goods. We therefore, admit the application for consideration on merits.

10. We observe that the applicant has sought advance ruling on the issue-

(1) The Applicant has approached the authority of advance ruling to determine the admissibility of Input Tax Credit of Tax paid on cost proposed to be incurred in relation to activity mentioned in the Annexure.

11. We find that applicant is engaged in the manufacturing of Charger of Mobile Phone & its Parts or Sub-Parts. The Applicant has purchased an old Factory situated at B-204, Phase-II, Noida for Expansion of their business and in said factory applicant shall also make new construction to setup plant and machinery. The Applicant will use aforesaid factory for Manufacturing & other related activities. The list of activities and nature of cost proposed to be undertaken/incurred under the above said property are provided in Annexure. Based on the activities, the costs proposed to be incurred 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
- ii. Mechanical Works; and
- iii. Dismantling Works

12. We find that Section 16 of the CGST Act, 2017 is in respect of eligibility and conditions for taking input tax credit which is reproduced as under-

Section 16. (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,-

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both.

Explanation.- For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961 (43 of 1961.), the input tax credit on the said tax component shall not be allowed.

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

13. We find that Section 17 of the CGST Act, 2017 provides for apportionment of credit and blocked credit. It is pertinent to have a look at the relevant legal provisions under Section 17(5) of the CGST Act. The same are given below:

“(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:—

- (a)
- (b)
- (c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;
- (d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation.—For the purposes of clauses (c) and (d), the expression “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property;

.....”

Explanation.— For the purposes of this Chapter and Chapter VI, the expression “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.

14. According to Section 16 (1) of the CGST Act, 2017, every registered person is entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used by him in the course or furtherance of his business. We find that apart from conditions as laid down under Section 16 of the CGST Act, 2017; Section 17 provides for restrictions and factual position and situations where ITC would not be available.

15. Pursuant to the aforesaid legal provisions, the following conclusions can be drawn:

(1) ITC restricted in case of construction undertaken on own account

Clause (d) restricts input tax credit of goods and services used by a person for construction of an immovable property (except plant and machinery) on his own account. Thus, if a person purchases construction material and engages a labor contractor to provide the constructions services using the purchased material, ITC shall not be available of both the goods purchased and the services of the labor contractor procured;

(2). ITC restricted in case of works contract services only to the extent expenses are capitalized

Clause (c) and clause (d) use the word ‘construction’ and as per the Explanation to clause (c) and clause (d) construction is **only to the extent of capitalization**. Consequently, ITC of any expenditure related to construction that is capitalized in the books of accounts shall be blocked. This shall not only cover the value of materials and works contract services but also expenditure directly related to the construction like inward supply of services from

real estate agent, architect, interior decorators as these are involved in the establishment of the immovable property.

(3) ITC eligible when works contract services used in respect of construction of plant and machinery

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

Thus, it becomes pertinent to understand what shall constitute plant and machinery under the Act. The Explanation to Section 17(5) has been reiterated below:

"Explanation.— For the purposes of this Chapter and Chapter VI, the expression "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"*

Immovable property is defined under Section 3(26) of the General Clauses Act as:

" immovable property" shall include land, benefits to arise out of the land, and things attached to the earth, or permanently fastened to anything attached to the earth

The effect of this explanation is that ITC on input of any goods or services including works contract service used towards construction of immovable property that is desired to be capitalized in the books of accounts shall not be admissible

When the goods or services are bought for construction of immovable property which will be used in the course of business, the GST paid on such good or service is also not eligible to be claimed as Input tax credit if the immovable property is constructed for own purpose, as the owner will become the end user and he cannot avail ITC of cost incurred on construction goods, as there is a break in the tax chain.

16. We find that the applicant had submitted details of nature, function, use, utility of different items on which admissibility of input tax credit has been sought. We proceed to examine one by one.

17. The first Major head mentioned at Sl. No. 1 is Building Work wherein ITC availability on (1) Cement, iron, dust, sand, bricks, bonding chemicals, concrete used in building for construction and repairing of production floors (2) labour contractor payment (used in making of production area) (3) Painting of building (4) False ceiling and lights (5) Wire Fitting on Production Floor (6) Furniture & Fixture for Production Floor (7) Furniture & Fixture for office and (8) Tiles used in production area have been sought by the applicant. 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.

18. The next Major head mentioned at Sl. No. 2 is Electrical Work wherein ITC availability on Sub-Station Work, DG Set Power Supply System, Lighting System Work,

Emergency and Exit Light Fixtures, Telephone System, LAN System, Fire Alarm System and Dismantling Work have been sought by the applicant. In Form GST ARA-01, the applicant has submitted that they shall make new construction. During construction of factory building, Electrical Work would form part of building. Electrical items and fittings after installation becomes a part and parcel of immovable property and consequently attract the provisions of Section 17(5)(c) and 17(5)(d) of CGST Act, 2017. Therefore, the input tax credit on piece of activity/material mentioned under Electrical Work Head is not admissible in our view.

19. The next Major head mentioned at Sl. No. 3 is Air Condition Work wherein ITC availability on Air-Conditioning Equipment, Air-Conditioning Piping work & Accessories, Ventilation Fans, Air-Distribution System, Automatic Control System and Dismantling Work have been sought by the applicant. During construction of factory building, Air Condition Work would form part of building. Air conditioning equipments after installation becomes a part and parcel of immovable property and consequently attract the provisions of Section 17(5)(c) and 17(5)(d) of CGST Act, 2017. In our view, the input tax credit on piece of activity/material mentioned under Air Condition Work is not admissible.

20. The next Major head mentioned at Sl. No. 4 is Fire Protection Work wherein ITC availability on Internal Fire Hydrant System, Sprinkler Work, Extinguisher, Fire Documentation and Dismantling Work have been sought by the applicant. The said items are not apparatus, equipment, and machinery fixed to earth by foundation or structural support. As such, in our view, the input tax credit of the aforesaid items mentioned under Fire Protection Work is not admissible as it does not fall under the definition of Plant & Machinery as given in Explanation to Section 17 of the CGST Act, 2017.

21. The next Major head mentioned at Sl. No. 5 is Mechanical Work wherein ITC availability on Plumbing (Internal and Domestic water distribution supply System), External Sewage System, Internal Sewer and venting system, Gardening water supply system, Sanitary Ware and CP Fitting and Dismantling Work have been sought by the applicant. The Plumbing, External & Internal Sewage system and sanitary fittings are integral parts of building or any other civil structure. Therefore, the ITC of GST paid on such Plumbing, External & Internal Sewage system and sanitary fittings is not available. The ITC on Gardening Water supply system is not admissible as not used in course or furtherance of business and as per restrictions in Section 17(5) of the CGST Act, 2017.

22. In view of the above discussions, we, both the members unanimously rule as under;

RULING

23.

Question The Applicant has approached the authority of advance ruling to determine the admissibility of Input Tax Credit of Tax paid on cost proposed to be incurred in relation to activity mentioned?

Answer:- The Input Tax Credit of Tax paid on cost proposed to be incurred in relation to activity mentioned is not admissible.

24. This ruling is valid only within the jurisdiction of Authority for Advance Ruling Uttar Pradesh and subject to the provisions under Section 103(2) of the CGST Act, 2017 until and unless declared void under Section 104(1) of the Act.


(Vivek Arya)
Member of Authority for Advance
Ruling


(Abhishek Chauhan)
Member of Authority for Advance
Ruling

To,

M/s Tiyyin Worldtech India Pvt Ltd
D-225, Ground & First Floor
Sector-63, Noida-201301

AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH

Copy to –

1. The Chief Commissioner, CGST & Central Excise, Lucknow, Member, Appellate Authority of Advance Ruling.
2. The Commissioner, Commercial Tax, Uttar Pradesh, Member, Appellate Authority of Advance Ruling.
3. The Commissioner, CGST & C. Excise, C-56/42, Sector-62, Noida, 201309.
4. The Deputy/Assistant Commissioner, CGST & C. Excise, Division-III, Room No. 402, 4th Floor, C-56/42, Renu Tower, Sector-62, Noida- 201309.
5. Through the Additional Commissioner, Commercial Tax, Gautam Budh Nagar Zone, Uttar Pradesh to jurisdictional tax assessing officers.

Note: An Appeal against this advance ruling order lies before the Uttar Pradesh Appellate Authority for Advance Ruling for Goods and Service Tax, 4, Vibhuti Khand, Gomti Nagar, Lucknow – 226010, within 30 days from the date of service of this order.