

**AUTHORITY FOR ADVANCE RULING, TAMIL NADU  
No.207, 2<sup>nd</sup> FLOOR, PAPJM BUILDING, No.1, GREAMS ROAD,  
CHENNAI 600 006.**

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017 AND  
UNDER SECTION 98(4) OF THE TNGST ACT, 2017**

**Members present:**

<b>Shri C. Thiyagarajan, I.R.S., Additional Commissioner/Member (CGST), Office of the Commissioner of GST and Central Excise, Audit I Commissionerate, Chennai - 600 101.</b>	<b>Shri B. Suseel Kumar, B.E., MBA., Joint Commissioner/Member (SGST), Authority for Advance Ruling, Tamil Nadu, Chennai - 600 006.</b>
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**Advance Ruling No. 36/ARA/2025, dated 02.09.2025**

1. *Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-Section (1) of Section 100 of CGST Act 2017/TNGST Act 2017, within 30 days from the date on which the ruling sought to be appealed is communicated.*
2. *In terms of Section 103(1) of the Act, Advance Ruling pronounced by the Authority under Chapter XVII of the Act shall be binding only-*
  - (a) *On the applicant who had sought it in respect of any matter referred to in sub-section (2) Section 97 for advance ruling.*
  - (b) *On the concerned officer or the Jurisdictional Officer in respect of the applicant.*
3. *In terms of Section 103(2) of the Act, this Advance Ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.*
4. *Advance Ruling obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, shall render such ruling to be void ab initio in accordance with Section 104 of the Act.*
5. *The provisions of both the Central Goods and Services Tax Act and the Tamil Nadu Goods and Services Tax Act (herein referred to as the Act) are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Services Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Services Tax Act.*

GSTIN Number, if any/User id	33AAACL6155E1ZU
Legal Name of Applicant	M/s. Shibaura Machine India Private Limited
Trade Name of Applicant	M/s. Shibaura Machine India Private Limited
Registered Address/ Address provided while obtaining User id	No.65 (P.O Box No.5), Chennai-Bangalore Highway, Chembarambakkam, Poonamallee Taluk, Thiruvallur, Chennai – 600 123.
Details of Application	Application Form GST ARA-01 received from the applicant on 04.10.2024.
Jurisdictional Officer	<b>State</b> – Sripurumbudur Assessment Circle, Kancheepuram Division <b>Center</b> -Chennai Outer Commissionerate Poonamallee Division
Nature of activity (s) (proposed/present) in respect of which advance ruling sought for	
A. Category	Factory/Manufacturing
B. Description (in brief)	Input Tax Credit eligibility on steel reinforcements for expansion of factory for manufacturing activity
Issues on which advance ruling required	Admissibility of Input Tax Credit of tax paid or deemed to have been paid
Question(s) on which advance ruling is required	<ol style="list-style-type: none"> <li>1) Whether Input Tax Credit (ITC) is eligible on steel reinforcements for expansion of factory for manufacturing activity?</li> <li>2) What should be the basis to arrive the timeline to avail ITC on tax invoice raised by supplier to bill “Advance Component” of the contract?</li> </ol>

M/s. Shibaura Machine India Private Limited, No.65, (P.O Box No 5), Chennai-Bangalore Highway, Chembarambakkam, Poonamallee Taluk, Thiruvallur, Chennai – 600 123 (hereinafter called as the “Applicant”) are registered under the GST Act with GSTIN 33AAACL6155E1ZU. The Applicant has made a payment of application fees of Rs.5,000/- each under sub rule (1) of Rule 104 of CGST Rules, 2017 and SGST Rules, 2017.

2. The applicant has sought advance ruling on the following questions, viz.,

- 1) Whether Input Tax Credit (ITC) is eligible on steel reinforcements for expansion of factory for manufacturing activity?
- 2) What should be the basis to arrive the timeline to avail ITC on tax invoice raised by Supplier to bill "Advance Component" of the Contract and Subsequent Adjustment of Advance in the Service Bills showing both Gross and Net amount.

3. The applicant has stated that they are engaged in the business of manufacture of injection moulding machinery and accessories. They further stated that they are expanding their business operation and have constructed a new factory adjacent to its existing factory and incurred capital expenditure towards procurement in relation to setting up of this factory. The applicant for the purpose of the factory expansion project, had entered into a contract with M/s. SMCC Construction India Ltd (Supplier or Vendor) for construction of its new factory. Perusal of the invoices issued reveals that the above said construction works falls under SAC 995413 – Design and Construction services of Greenfield Industrial Building Project (Package 1), leviable to GST @ 18%.

4. Regarding the applicant's interpretation of law in respect of the questions raised by them for which Advance Ruling is sought, -

1. The applicant states that Section 16 of CGST and TNGST Act, 2017, reads as under :-

"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."

Therefore, in order to 'avail ITC on any inward supply', the supply should be used in the course or furtherance of business. The term 'business' has been defined under Section 2(17) of CGST Act & TNGST Act in below mentioned manner:-

"business includes—

- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
- (c) .....
- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
- (e) .....

2. The Applicant states that any acquisition of capital goods and services in connection with commencement of business is very much a business activity. When this definition is read with the provisions of Section 16(1) of the CGST Act, it can be understood that such procurements which are intended to be used in the course of furtherance of 'business' is eligible for availment of ITC. Based on the above provisions, the Applicant submits the following : -

- i) That the Applicant is engaged in the manufacture of injection moulding machinery and accessories which can certainly be qualified under clause (a) of definition of term 'business.'
- ii) The Contract entered is for supply, fabrication and erection of steel column, rafters & frames in the new factory commissioned for expansion of business activity. That the Applicant should hence be eligible for input tax credit on the inputs & input services used in the course or furtherance of business.

3. Further, the Applicant submits that they have also satisfied the other conditions for availing ITC as laid down in Section 16(2) of CGST Act such as possession of tax invoice, receipt of goods/services/both, payment to supplier, etc. Since, the eligibility and the conditions for taking input tax credit is established in the above paragraphs, the Applicant also wishes to provide their interpretation on how the said credit is not blocked under the provisions of GST Law. Section 17(5) of CGST Act & TNGST Act provides the cases where ITC is inadmissible. Relevant text of Section 17(5) was reproduced as under :-

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

*(a) motor vehicles for transportation of persons.....*

*.....*

*(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 capitalisation, to the said immovable property;"*

It can be inferred from the Contract that the above-said steel reinforcements are in the nature of apparatus and equipment that are being both embedded into earth and fixed overhead.

4. The Applicant states that there are two types of steel reinforcement that are being commissioned in the new factory. The primary steel reinforcement relates to the vertical pillars of the new factory that are being embedded into the earth. These steel works are made incrementally strong and large insofar as to carry the load of the additional steel structures to be embodied in it and support the overhead crane movements. The secondary steel works relates to the horizontal pillars to be embodied in the primary steel structure. These steel works placed at higher-level supports the overhead crane movements and transporting of semi-finished/finished machineries across various areas

of the factory. Further, the lower-level structural steels support the heating, ventilation and air-conditioning (HVAC) machines. These secondary steel structures directly relate to the operations of the plant and machinery deployed at the factory premises. The Applicant enclosed certain images relating to structural steel works with their application to give an understanding of the purpose of the said steel structures. Further, the Applicant enclosed the declaration provided by the Supplier apportioning the value related to secondary steel structures with their application, those assist the plant and machinery.

5. The Applicant submits that the Immovable property is not defined in GST Law. Section 3(26) of the General Clauses Act, 1897, provides for an expression as below:

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

The term “attached to the earth” has not been defined in the General Clauses Act, 1897. Section 3 of the Transfer of Property Act, however, gives the following meaning to the expression:

*“(a) rooted in the earth, as in the case of trees and shrubs;  
(b) imbedded in the earth, as in the case of walls and buildings;  
(c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.”*

6. The supply under question eventually satisfies the conditions laid down in the definition of ‘Plant and Machinery’ for the purpose of GST Law. Relevant extract of explanation of the term ‘Plant and Machinery’ under Section 17(5) is reproduced below for ease of reference:

*“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”*

Hence, the term Plant and Machinery with reference to Section 17(5)(c) & 17(5)(d) shall mean:

- Apparatus fixed to earth by foundation or structural support;
- Equipment fixed to earth by foundation or structural support;
- Machinery fixed to earth by foundation or structural support;
- Foundation and Structural Support to Apparatus, Equipment and Machinery.

7. The GST Law specifically excludes plant and machinery from the ambit of works contract services/ construction related to immovable property, providing an eligibility to avail ITC on such supplies. The Applicant submits that Apparatus, Equipment, Machinery are not defined under the GST Law. Hence, the inference is drawn to Mc-Graw Hills dictionary which defines these items as follows:

**“Apparatus** - A compound instrument designed to carry out a specific function.

**Equipment** - One or more assemblies capable of performing a complete function.

**Machine** - A mechanical, electric, or electronic device, such as a computer, tabulator, sorter or collator.

**Machinery** - A group of parts or machines arranged to perform a useful function.”

8. The Applicant also draws inference for the term ‘Apparatus’ from Webster’s Encyclopedic Unabridged Dictionary of the English Language which reads as under:

*“a group or aggregate of instruments, machinery, tools, materials etc., having a particular function or intended for a specific use. 2. any complex instrument or machine for a particular purpose. 3. any system or systematic organization of activities, functions, processes, etc., directed toward a specific goal; the apparatus of government; espionage apparatus. 4. Physiol, a group of structurally different organs working together in the performance of a particular function: the digestive apparatus”*

Accordingly, a group of instruments, tools, materials etc., having a particular function or intended for a specific use at the Plant. Therefore, the secondary steel structures get covered under the definition of plant and machinery.

9. The steel structures commissioned in the new factory assists the operations of plant and machinery deployed in the said factory. This would qualify as foundation and structural support to the apparatus, equipment and machinery; hence, ITC would be eligible on the same. Accordingly, the Applicant submits that Input Tax Credit on the transaction under question does not fall under any of the categories of Section 17(5), and hence not blocked. Further, the Applicant submits that these items are duly categorized as “Plant and Machinery” in its books of accounts. These are currently parked in the “Capital Work-In-Progress” and would be capitalized in the books of accounts once the factory premises is commissioned.
10. The Applicant has referred the ruling of Appellate Authority for Advance Ruling, Tamil Nadu in the case of *M/s. Coral Manufacturing Works India Private Limited [2023 (7) TMI 524]*, wherein, it was held that ITC is eligible proportionate to the extent of structural support erected in relation to overhead crane. Relevant extract was re-produced as below:-

**“The overhead crane and its proportionate structural support would be categorized as plant and machinery as per the explanation to Section 17 of the TNGST Act, 2017. Such structural support would not fall under the category of blocked input tax credit. Hence the appellant would be eligible for input tax credit proportionate to the extent of structural support erected in relation to overhead crane alone subject to fulfillment of conditions stipulated in section 17(5)(c) and (d) of the CGST Act, 2017 and explanation thereunder. However, they are not eligible for**

*input tax credit relating to construction of other civil structure like side walls, roof of the Integrated factory building.*

*In other words, the eligibility of ITC would be as follows:*

*(i) The appellants are entitled to the eligible ITC on overhead rails and gantry beams laid exclusively for the purpose of movement of overhead crane.*

*(ii) The appellants are entitled to proportion of eligible ITC in respect of structural support for overhead crane by applying the ratio of Load transferred by overhead crane, railings and gantry beams to the pillars and beams to the total load including roof, walls etc. whose load are transferred to the pillars and beams of the integrated factory building*

*(iii) However, they are not eligible for input tax credit relating to construction of other civil structure like side walls, roof of the Integrated factory building”*

Seeking inference from the above ruling and in comparison, with the Contract, the current supply under question duly covers the structural support for overhead crane and other plant and machinery, and accordingly, ITC shall be eligible on the same.

11. The Applicant also refers the ruling of Hon'ble Supreme Court of India in the case of *M/s. Jayaswal Neco Ltd. Versus Commissioner of Central Excise, Raipur [2015 (4) TMI 569]*, wherein, the apex court had held that MODVAT credit is eligible insofar as it pertains to item railway track material used for handling raw materials, process goods. The Applicant further refers the ruling by Allahabad High Court in the case of *M/s. Commissioner of Income-tax V/s. Opal Construction [2004 136 Taxman 628 (Allahabad)]*. Wherein it had been held that Structural steel and tubular structure fall within definition of 'plant and machinery'. Considering the above, it is the submission of the Applicant that the ITC must be eligible for the Applicant on the subject transaction.
12. Regarding the Invoicing method adopted by the Supplier, relating to payment of advance, the Applicant submits that as per the clause 8 of Contract, the Applicant has paid the Supplier an amount equal to 10% of the Contract price as an advance, upon issuance of Letter of Award. The Supplier has issued tax invoice for receipt of this advance payment ('first invoice'). However, there will be no actual supply of goods or services or both at that specific point in time when such first invoice was issued.
13. The Applicant wishes to state that while it has fulfilled most of the conditions specified in Section 16(2) of the CGST Act, for availment of ITC, except the condition with respect to receipt of supply as mentioned under Section 16(2)(b) of CGST Act, i.e., "(b) he has received the goods or services or

**both**.". Accordingly, it can be understood that the Applicant would not stand to fulfill the above condition at the time of receiving the invoice pertaining to payment of advance. This means that the ITC is eligible only upon receipt of supply of goods or services or both as the case may be, which concludes only once the last invoice is raised by the Supplier wherein such advance is concluded to be fully adjusted. The Applicant states that once the Supplier commences to execute the Contract, they start issuing subsequent invoices ('running bills' or 'RA bills') based on completion of payment milestones as defined in the Contract. The Supplier also issues invoices for supply of steel reinforcement onsite on monthly basis as per the payment milestones of Contract ('Material bills'). Further, when the Supplier starts to raise the RA bills, he has three components which is gross billing, adjustment of advance (raised in the first invoice), and the net billing. In the instant case, the Supplier has adjusted 10% of the gross amount on all RA bills as the mobilization advance which was paid during the time of issuance of first invoice. The Applicant enclosed the sample copies of invoices (first invoice, one RA bill and one material bill) raised by the Supplier with their application, highlighting the portion of adjustment which are discussed in above paragraphs.

14. The Supplier had raised the first invoice with respect to the supply under question in the FY 2022-23 (March 2023). However, the receipt of last invoice wherein the advances are fully adjusted, was issued in FY 2024-25. One of the conditions specified in Section 16(2) to avail ITC on invoices is the receipt of goods or services or both. However, as per Section 16(4) of the CGST Act, *"(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 thirtieth day of November following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier."*

In the instant case, on a plain reading, time limit to avail ITC on the first invoice raised by the Supplier shall fall on 30 November 2023. On the contrary, the Applicant would not have fulfilled the conditions to avail such ITC as the receipt of goods or services or both would fall after the above-said time limit.

15. As per the *doctrine of Harmonius Construction*, a provision of the statute should not be interpreted or construed in isolation but as a whole, so as to remove any inconsistency or repugnancy. Moreover, it may be noted that the Section 16(2) contains a *non-obstante* clause overriding other provisions of Section 16. Given the same, the provisions of Section 16(2) shall prevail in case of any conflict between Section 16(2) and other sub-sections of Section 16. Basis the above provisions, the right to avail ITC arises after the last date of availing the said credit as per as per Section 16(4). Further, the Applicant places its reliance on ruling of Hon'ble Allahabad High court in the case of *M/s. Century Laminating company V/s. Commissioner of Central Excise, Meerut [2015 (3) TMI 130 - Allahabad High Court]*, wherein it has been

held as follows:

*"when certain goods based on the invoice was received during the period of six months but the last and final lot was received after the period of six months, we are of the opinion that Rule 57D(6) now Rule 57G(2) of the Rules being procedural in nature does not dis-entitle the claim of the assessee for claiming Modvat credit. In the absence of any deliberate delay, coupled with the fact that the transaction executed by the assessee, being a *bona fide* one and, based on the direction of the Superintendent, Central Excise dated 8th February, 1995, the assessee, in the instant case, was entitled for Modvat credit"*

Therefore, the Applicant is of the view that it can avail the credit on input tax on receipt of supply of goods or services or both against an invoice irrespective of the receipt of supply after the last date under Section 16(4) of the CGST Act. Further, without prejudice to the above, with the above-said time limit fast approaching as on the date of filing this present application, the Applicant seeks to secure the Input Tax Credit on the invoices as a precautionary measure by availing it in the GSTR-3B return of the tax period - October 2024, with respect to all the invoices. Nonetheless, they stated that the credit will not be utilized until an outcome on this application is provided.

5.1 The applicant falls within the administrative jurisdiction of 'STATE'. The concerned Authorities of the Centre and State were addressed to report the detailed remarks and no pendency report on the questions raised by the applicant in their ARA application.

5.2 The jurisdictional Assistant Commissioner (ST) of the Sriperumbudur Assessment Circle vide letter dated 20.05.2025 has stated that she is of the view that the applicant is eligible for proportionate ITC on steel structure erected at their factory which was used to support HVAC machine and movement of overhead crane. She further stated that no issues are pending, and no show cause notice is issued on the subject matter.

5.3 Since, no remarks have been received from the Central Authority, it is construed that there are no pending proceedings on the questions raised by the applicant in their advance ruling application.

#### **Personal Hearing**

6. 1 The applicant was given an opportunity to be heard in person on 16.04.2025 vide this office memorandum No.23/2024, dated 03.04.2025. Mr. Rajaram R and Mr. Gowtham T of M/s. Ernst & Young LLP appeared for the personal hearing as the authorised representatives (AR) of M/s. Shibaura Machine India Private Limited. The AR reiterated the submissions made in their application for advance ruling.

6.2 They explained that the applicant is engaged in the business of manufacture of injection moulding machinery and its accessories. They further stated that they are expanding its business operation and have constructed a new factory adjacent to its existing factory and has incurred capital expenditure towards procurements in relation to setting up of the new facility. The procurement under this contract,

involves fabrication and erection of structural steel works and sheeting works. While the AR acknowledges that the ITC involved in 'sheeting work' of vertical pillars is ineligible, they stated that the structural steel work is secondary in nature and erected with horizontal pillars with a view to support the cranes for movement of goods, and accordingly are eligible for availment of ITC. When the Members enquired about the capitalization aspect, the AR explained that while the portion relating to civil work is capitalized as building, the structural steel work is capitalized as 'Plant and Machinery' in their books of accounts. Likewise, when the members enquired about the mode of availment of ITC, especially when the contract is a composite one involving both civil work and installation of goods, the AR explained that ITC is availed only on the structural steel work portion and not on the civil work portion or on the sheeting work portion, based on the break-up available under the 'Cost Abstract' and 'Bill of Quantities' that forms part of the contract. They further stated that the ITC availed on the fixture/equipment in question will not be utilized until an outcome to this application is provided. They cited the ruling of AAR, Tamil Nadu in the case of M/s. Coral Manufacturing Works India Private Limited in their support.

6.3 Owing to change in the constitution of the AAR bench, due to transfer and posting of one of the members of the bench, another opportunity for hearing was offered to the applicant, and Mr. Ranjit V Jolly, and Mr. Gowtham T, of M/s. Ernst & Young LLP, appeared for the personal hearing on 24.07.2025, as the authorized representatives (AR) of M/s. Shibaura Machine India (P) Ltd. They reiterated the submissions made already during the original hearing held on 16.04.2025. In addition to the same, they invited the attention of the Members to the images furnished in page 545 of the application for advance ruling filed, and explained that three levels of horizontal beams are installed in the new factory premises. While the steel structure at the first and the second levels are meant exclusively for crane movement alone, the steel structure at the third level is meant to support the building as well as for crane movement. In this regard, they further stated that under page 549 of the application filed, the details of the split-up of structural steel works which relates to building and the other part which relates to plant and machinery has been furnished.

#### **Discussions and Findings:**

7.1 We have carefully examined the submissions made by the applicant in their advance ruling application and the submissions made during the personal hearing. We have also considered the issue involved, the relevant facts and the applicant's submission / interpretation of law in respect of question on which the advance ruling is sought.

7.2 We note that the applicant is engaged in the business of manufacture of injection moulding machinery and accessories. Since they are expanding their business operation, they have constructed a new factory adjacent to their existing factory, whereby they have incurred capital expenditure towards procurements in relation to setting up of this factory. We further take note of the fact that in the instant case, they have entered into a separate contract with the Supplier

M/s. SMCC Construction India Ltd., for "Design and Construction Works" for the new industrial building project.

7.3 The Contract is broadly classified into four categories as given below:-

Sl No	Particulars	Amount (Exclusive of GST)	Remarks
1	Civil Works	49,30,65,532	Site Grading and all Civil works related to factory building
2	<b>Pre-Engineered building (PEB) Works</b>	<b>27,29,21,237</b>	<b>Supply, fabrication and erection of structural steel works and sheeting works</b>
3	Fire-Fighting System (FFS)	4,65,36,401	Supply, installation, testing and commissioning of fire pump equipment, hydrants, sprinkler system, alarms, extinguishers, and etc.
4	Public Health Engineering (PHE)	1,74,81,313	Sanitary fixtures & fittings, sewage system, water supply system, rain water harvesting system pumps, etc.

While the Applicant admits and acknowledges that ITC on Sl.No.1 is ineligible to be availed, the instant application is filed with respect to question on eligibility of ITC on invoices raised pertaining to Sl.No.2, viz., 'Pre-Engineered building (PEB)' relating to structural and sheeting works. The PEB works can further be bifurcated into following categories based on the scope of work outlined in the contract, i.e.,

Sl No	Particulars	Amount (Exclusive of GST)
1	<b>Structural Steel Works:</b> Supply, fabrication and erection of steel column, rafters & frames including crane gliders and cat-walkers	<b>22,42,06,442</b>
2	<b>Sheeting works:</b> Supply and fixing of sheeting works related to walls and roofs.	4,87,14,795
<b>TOTAL</b>		<b>27,29,21,237</b>

Here again, the Applicant acknowledges that ITC with respect to 'Sheeting works' is ineligible. Accordingly, this application seeks eligibility of ITC with respect to supply and installation of structural steel works (Sl.No.1 of above table).

7.4 To begin with, the relevant provisions of Section 16(1) of the CGST Act, 2017, that prescribes the eligibility and conditions for taking ITC, is reproduced below :-

*"(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."*

It could be observed from the above, that the most crucial phrase to the entire scheme involving availment of ITC is "used or intended to be used in the course or furtherance of his business". While the said legal provision provides for entitlement of 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 business, it also comes up with a rider, viz., "subject to such conditions and restrictions as may be prescribed".

7.5 It may be seen that the provisions of Section 17 of the CGST Act, 2017 discusses about the ITC that is blocked. The relevant provisions of sub-section (5) to Section 17, which impacts the issue in the instant case, is as given below :-

"(5) Notwithstanding anything contained in sub-Section (1) of Section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely;

- (a) motor vehicles -----
- (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.'

Accordingly, it becomes clear that the embargo in relation to availment of ITC in the instant case revolves very much around clauses (c) and (d) of Section 17(5) of the Act, ibid, and both the clauses restricts ITC availment on receipt of Works Contract service, or on receipt of any goods or service or both, when made for 'construction of an immovable property.

7.6 Further, the expression "plant and machinery" as defined in the explanation under Section 17 of the CGST Act, 2017, is extracted as 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.

Whereby it is evident that the expression 'plant and machinery' talks about an apparatus, equipment and machinery fixed to earth, either by foundation or by structural support, where the crucial phrases are 'used for making outward supply of goods or services or both', and 'and includes such foundation and structural supports'.

7.7 However, it could be seen from the provisions of section 17(5)(c) of the Act, that the phrase, viz., 'other than plant and machinery', finds a place under the said clause, from which it gets conveyed that availment of ITC on 'plant and machinery' is not blocked under the said provision. It is to be noted here that even the phrase 'other than plant or machinery' that was part of clause (d) of Section 17(5), now stands amended as 'other than plant and machinery', retrospectively with effect from 1.07.2017 onwards, through Sl.No.124 of the Finance Act, 2025 (No.7 of 2025), which reads as below :-

*"124. In Section 17 of the Central Goods and Services Tax Act, in sub-section (5), in clause (d), -*

*(i) for the words "plant or machinery", the words "plant and machinery" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of July, 2017;*

*(ii) the Explanation shall be numbered as Explanation 1 thereof, and after Explanation 1 as so numbered, the following Explanation shall be inserted, namely:-*

*'Explanation 2. – For the purpose of clause (d), it is hereby clarified that notwithstanding anything to the contrary contained in any judgement, decree or order of any court, tribunal, or other authority, any reference to "plant or machinery" shall be construed and shall always be deemed to have been construed as a reference to "plant and machinery",.'*

7.8 With these aspects in mind, we now proceed to examine the transaction involved and its purpose, in order to determine the ITC eligibility or otherwise in the instant case. Accordingly, the crucial aspects that are to be discussed and decided in the instant case of the applicant, are :-

- (i) Whether the execution of project in the instant case results in the creation of an immovable property or not?
- (ii) Whether the execution of the project qualifies as 'Works Contract' or not?
- (iii) Whether the execution of 'Pre-Engineered Building (PEB) Works' for the factory gets categorised as 'Plant and Machinery' or not?

7.9.1 In this regard, we note that the applicant has entered into a Contract Agreement with M/s. SMCC Construction India Limited, New Delhi for execution of '**Construction of New Factory Project**', at Chembarambakkam, Chennai. Therein, the 'Scope of Work' has been specified as "**Construction works including Civil, Electrical and Mechanical Works**". Further, under clause (3) to 'Article 1. General Principles' of the General Conditions of Contract, we observe the following remarks, viz.,

*"(3) The Contractor shall complete the Work and deliver the Permanent Work to the owner in accordance with the Contract, and the Owner shall make the payments of the Contract Sum as described in the Contract Agreement to the Contractor as per the terms of the Contract Agreement."*

In addition to the same, under the Annexure IB-2 forming part of the 'Cost Abstract – PEB Works' of the Contract, a break-up leading to arrival of total cost of Rs.27,29,21,237/- for the PEB works has been provided, as in the table below :-

Sl No	Particulars	Amount (Exclusive of GST)
1	<b>Structural Steel Works:</b> Supply, fabrication and erection of steel column, rafters & frames including crane gliders and cat-walkers	22,42,06,442
2	<b>Sheeting works:</b> Supply and fixing of sheeting works related to walls and roofs.	4,87,14,795
<b>TOTAL</b>		<b>27,29,21,237</b>

7.9.2 We note that the Applicant has stated in the application filed by them that there are two types of steel reinforcement that are being commissioned in the new factory. The primary steel reinforcement relates to the vertical pillars of the new factory that are being embedded into the earth. These steel works are made incrementally strong and large insofar as to carry the load of the additional steel structures to be embodied in it and support the overhead crane movements. The secondary steel works relates to the horizontal pillars to be embodied in the primary steel structure. These steel works placed at higher-level supports the overhead crane movements and transporting of semi-finished/ finished machineries across various areas of the factory. Further, the lower-level structural steels support the heating, ventilation and air-conditioning (HVAC) machines. These secondary steel structures directly relate to the operations of the plant and machinery deployed at the factory premises. The Applicant enclosed certain images relating to structural steel works with their application to give an understanding of the purpose of the said steel structures. Further, the Applicant enclosed the declaration provided by the Supplier apportioning the value related to secondary steel structures which assist the plant and machinery.

7.9.3 The Applicant stated that the steel structures commissioned in the new factory assists the operations of plant and machinery deployed in the said factory, whereby it would qualify as foundation and structural support to the apparatus, equipment and machinery and hence, ITC would be eligible on the same. Accordingly, the Applicant submits that Input Tax Credit on the transaction under question does not fall under any of the categories of Section 17(5), and hence not blocked. Further, the Applicant submits that these items are duly categorized as "Plant and Machinery" in its books of accounts. These are currently parked in the "Capital Work-In-Progress" and would be capitalized in the books of accounts once the factory premises is commissioned.

7.9.4 From the scope of the contract entered into between the parties, it could be seen that the agreement is not just for installation/commissioning of Civil, Electrical & Mechanical works, and it is a composite one of 'Works Contract' Service involving "**Supply**, fabrication and erection of steel column, rafters & frames including crane gliders and cat-walkers", as indicated in the table above, under the Annexure IB-2 forming part of the 'Cost Abstract – PEB Works' of the Contract. Apart from the same, on perusal of the 'Bill of Quantities for PEB Works (R1b)', forming part of the contract, it is seen that 'I. **Structural Steel Work**', specifies

various areas of work involving **Supply**, Fabrication and Erection of Anchor, Primary Section, Pipe Racks, Crane Girder, Tubular Steelwork, etc.

In this regard, we observe that when a comprehensive civil, electrical and mechanical installation for a new factory set-up begins, the structural steel work do not have an independent existence and it becomes part of the entire building/infrastructure and thereby a part of the immovable property. This apart, we find under the General Clauses Act, 1897, 'Immovable Property' has been defined under Section 3(26) as "*Immovable Property shall include land, benefits arising out of land and things attached to the earth, or permanently fastened to anything attached to the earth*" Accordingly, irrespective of the fact whether a particular thing is directly attached to earth, or permanently fastened to anything that is attached to earth like the walls, pillars, etc., it becomes part of such immovable property. The fact that a clause in the contract itself, specifies the permanent and immovable nature of the executed project, viz., "*(3) The Contractor shall complete the Work and deliver the Permanent Work to the owner in accordance with the Contract,*" proves the case in point.

7.9.5 At this juncture, we note that during the personal hearing held on 16.04.2025, when the Members enquired about the capitalization aspect, the AR explained that while the portion relating to civil work is capitalized as building, the structural steel work is capitalized as 'Plant and Machinery' in their books of accounts. In this regard, it is seen that the Accounting Standards prescribe accounting of revenue expenses and capital expenses. If the expenses are in the nature of capital expenses and are related to fixed assets, then they are capitalised. Merely, accounting an immovable property as a movable property or accounting a particular item under a different head, does not preclude the immovable nature of the item being accounted.

7.10.1 With regard to the aspect as to whether the transaction involved in the instant case qualifies as 'Works contract' or not, we note that the scope of supply in the instant case is a composite one involving "**Supply**, fabrication and erection of steel column, rafters & frames including crane gliders and cat-walkers". In this regard, we find that the contract of goods and services which are naturally bundled and supplied in conjunction with each other, as in the instant case, gets covered as a 'composite supply' as defined under Section 2(30) of the CGST Act, 2017, which is reproduced below :-

**"(30) 'composite supply' means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;"**

When the said composite supply involves a contract for building, construction, erection, installation or commissioning of any immovable property, wherein the transfer of property in goods is involved in the execution of such contract, it

becomes a classic case of 'works contract' service, which is defined as under Section 2(119) of the Act, *ibid*, i.e.,

"(119) '**works contract**' means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.'"

And such composite supplies under specific circumstances, are to be treated as a supply of 'Services', as laid down in paragraph 6 of Schedule II of the CGST Act, 2017, which reads thus,

#### **"6. Composite supply**

*The following composite supplies shall be treated as a supply of services, namely:—*

*(a) **works contract** as defined in clause (119) of section 2; and*

*(b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration."*

7.10.2 Accordingly it becomes clear that the instant case of the applicant ideally gets covered as a composite service of 'Works Contract' as specified under Section 2(119) of the CGST Act, 2017. In this regard, when the members enquired about the mode of availment of ITC, especially when the contract is a composite one involving both civil work and installation of goods, the AR explained that ITC is availed only on the structural steel work portion and not on the civil work portion or on the sheeting work portion, based on the break-up available under the 'Cost Abstract' and 'Bill of Quantities' that forms part of the contract. They further stated that the ITC availed on the fixture/equipment in question will not be utilized until an outcome to this application is provided.

7.11.1 Accordingly, we now move on to discuss as to whether the Pre-Engineered Building (PEB) Work, and the resultant structural steel work for the factory gets categorised as 'Plant and Machinery' or not? In general parlance, an installation or even a factory is referred to as a 'Plant', and a Machinery is taken to mean 'A group of parts or machines arranged to perform a useful function'. However, it is to be noted that the categorisation as to 'Plant and Machinery', for the purposes of availment of ITC, is not to be determined as it is meant in general parlance, and that the same is liable to be determined strictly in line with the definition prescribed under the statute. Further, the expression '**Plant and Machinery**' is to be considered in *toto per se*, and that the same cannot be seen as a 'Plant' as such, or as a 'Machinery' as such, or as 'Plant **or** Machinery'. For reference, the expression "plant and machinery" as defined in the explanation under Section 17 of the CGST Act, 2017, is extracted as 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.

Accordingly, the expression "plant and machinery" as defined in the explanation under Section 17 of the CGST Act, 2017, is taken to mean an -

- (a) apparatus, equipment or a machinery;
- (b) which are fixed to earth either by foundation or by structural support;
- (c) which are used for making outward supply of goods or services or both;
- (d) and includes such foundation or structural support.

7.11.2 At this juncture, we take cognizance of the fact that the terms 'Apparatus', 'Equipment', 'Machinery' are not defined under the GST Law, and so we consider the definitions of the respective items as provided by the Applicant in their application for advance ruling, drawing inference to Mc-Graw Hills dictionary, wherein these items have been defined as follows :

**Apparatus** - A compound instrument designed to carry out a specific function.

**Equipment** - One or more assemblies capable of performing a complete function.

**Machinery** - A group of parts or machines arranged to perform a useful function."

It could be seen from the above, that the comprehensive Pre-Engineered Building (PEB) Work, including the sheeting work and structural steel work with regard to the entire factory set-up, is in relation the commissioning of the new factory, which is general in nature. Whereas, a Machinery, Apparatus, or an Equipment on the other hand are seen as individual units, meant for a specific or an intended function. Therefore, neither the sheeting work nor the structural steel work can be considered as an apparatus, equipment or machinery. However, the applicant has stated in the application that they are seeking eligibility of ITC only in respect of that portion of the contract which relates to the steel structural support that is used for operating the cranes and HVAC machines. In this regard, the averments of the applicant as in paras 26 to 28 of the application for advance ruling filed by them are reproduced below for reference,

"26. The Applicant wishes to submit the fact that there are two types of steel reinforcement that are being commissioned in the new factory.

27. The primary steel reinforcement relates to the vertical pillars of the new factory that are being embedded into the earth. These steel works are made incrementally strong and large insofar as to carry the load of the additional steel structures to be embodied in it and support the overhead crane movements.

28. The secondary steel works relates to the horizontal pillars to be embodied in the primary steel structure. These steel works placed at higher-level

**supports the overhead crane movements and transporting of semi-finished/finished machineries across various areas of the factory. Further, the lower-level structural steels support the heating, ventilation and air-conditioning (HVAC) machines.** These secondary steel structures directly relate to the operations of the plant and machinery deployed at the factory premises."

7.11.3 Under the facts and circumstances of the instant case, we observe that Cranes get covered under chapter heading 84 which deals with Machinery, and that they fall under HSN 8426. Accordingly, it becomes clear that Cranes are nothing but a 'Machinery' which is commissioned to perform the useful function of moving objects/materials within the factory premises. As Crane is a machinery used for making outward supply of goods or services or both, it becomes clear that they get categorised as 'Plant and Machinery'. Likewise 'HVAC machines' which stands for Heating, Ventilation and Air-conditioning machine falls under HSN 8415, and the same is a machinery commissioned to perform a useful function of maintaining the requisite temperature within the factory premises. Here again, it gets categorised as 'Plant and Machinery'. It is to be noted here that though the ITC eligibility or otherwise of 'cranes', or the 'HVAC machines' is not the bone of contention in the instant case, its relevance to the issue in question is of immense significance as the secondary steel structural work provides the structural support for the crane movement and support of HVAC machines as reported by the applicant.

7.11.4 At this juncture, it becomes necessary to focus on the phrase "***and includes such foundation and structural supports***" of the definition 'Plant and Machinery' referred above, which goes to convey the fact that apart from the apparatus, equipment or machinery, the foundation and structural support that is involved therein are also included under the said definition. Therefore, irrespective of whether the instant contract gets covered as a 'composite works contract' as specified under the provisions of Section 17(5)(c), or as an independent Construction/Installation service as specified under Section 17(5)(d), the fact remains that ITC is not blocked on the same, in view of the definition of 'Plant and Machinery' as in the 'Explanation' and also in view of the fact that the same is covered under the exclusion clause, viz., "Other than Plant and Machinery" under both the provisions of both Section 17(5)(c) and 17(5)(d) of the CGST Act, 2017.

7.11.5 However, we would like to make it clear here that the 'Pre-Engineered Building (PEB)' work, per se cannot be categorised as 'Plant and Machinery', and that the structural support erected in relation to overhead crane and HVAC machine alone would get covered under the extended meaning of 'Plant and Machinery'. We are therefore of the opinion that the proportionate ITC in respect of the secondary steel structural support that is relatable exclusively to the overhead crane movement and HVAC machine is not blocked under Section 17(5) of the CGST Act, 2017, and as a result becomes eligible for availment of ITC by the applicant. In this regard, we find that the ruling dated 17.04.2023 of the Appellate Authority for Advance Ruling, Tamil Nadu (AAAR), as cited by the applicant on an identical issue in the case of M/s. Coral Manufacturing Works India Private Limited, supports the view. Here again, we would like to insist that ITC is not

permissible on the Civil work, if any, on the execution of the contract involved in the instant case. Further, no ITC is available on the 'Sheeting works related to walls and roofs', and even under the 'Structural Steel works', ITC is eligible on that portion of the secondary steel works that is attributable to the support of HVAC machine and overhead crane movement only.

7.12.1 Accordingly, we now move on to discuss the other query raised by the applicant, viz., "*What should be the basis to arrive the timeline to avail ITC on tax invoice raised by Supplier to bill "Advance Component" of the Contract and Subsequent Adjustment of Advance in the Service Bills showing both Gross and Net amount.*". Regarding this issue, we find that the applicant is of the view that availment of ITC on an invoice issued by the supplier for receipt of advance amount towards a contract is hit by the condition stipulated in Section 16(2)(b) of the CGST Act, 2017, which states that the recipient should have received the goods or services or both. They have stated that as per the '*Doctrine of Harmonious Construction*', a provision of the statute should not be interpreted or construed in isolation but as a whole, so as to remove any inconsistency or repugnancy.

7.12.2 Accordingly, we note that Section 16(1) of the CGST Act, 2017, runs as -

(1) *Every registered person shall, subject to 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.*

Further, we note that the 'Explanation – (i)' to Section 13(2) of the CGST Act, 2017, creates a deeming fiction that 'the supply shall be deemed to have been made', when the date of receipt of payment precedes the supply of service, i.e., when advances are received before the provisioning of services. The relevant extract of Section 13 is reproduced as under :-

**13. Time of Supply of Services.—** (1) *The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.*

(2) *The time of supply of services shall be the earliest of the following dates, namely:—*

(a) *the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or*

(b) *the date of provision of service, if the invoice is not issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or*

(c) *the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:*

Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

Explanation.—For the purposes of clauses (a) and (b)—

(i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;

(ii) “the date of receipt of payment” shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

7.12.3 In this regard, we find that Hon'ble High Court of Mumbai in its Order dated 14.11.2024 in W.P No.2980 of 2019 in the case of M/s.L & T IHI Consortium Vs UOI has discussed the very issue in question in a vivid manner, which in our opinion is very much relatable to the instant case. The relevant extracts of the said judgement, i.e., paras 118 and 119 are reproduced hereunder for appreciation, i.e.,

“118. In the aforesaid context, we may also observe that sub-section (1) of Section 16 inter alia makes a person 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. Thus, the entitlement to take credit of input tax charged on any supply of goods or services is in regard to such components “used” or “intended to be used in the course” or “furtherance of his business”, is the basic requirement for the amount to be credited to the electronic credit ledger of such person. Although sub-section (1) is conditional upon the fulfillment of the requirements as contained in sub-section (2), in our opinion, the incorporation as contained in sub-section (2)(b) being one of the conditions, namely that the person has received the goods or services or both would also be required to be read, to further the intention as to what is provided for in sub-section (1) of Section 16, namely credit to be made available for supply of goods or services or both to the person when the goods and services were “intended to be used” in the course or furtherance of his business. The words “intended to be used in the course” or “furtherance of his business” would mean/include the deferred receipt of goods or services or both. Also, the word “intended” as used in sub-section (1) of Section 16 is required to be given its due meaning in applying the provisions of sub-section (2)(b) of Section 16, when it prescribes that the credit of any input tax would inter alia be available when the registered person has received the goods or services or both. If we do not read that the provision in such manner or we do not attribute such meaning in conjointly reading the provisions of sub-section (1) and sub-section (2)(b) of Section 16, it is likely to create an anomalous situation or even an absurdity, which is instantly seen from the facts of this case.

119. We say so for the reason that on one hand in the present case, tax has been deposited by the petitioner on the intended supply of goods or services or both entitling itself for its credit into electronic credit ledger as permissible under Section 16(1), however, on the other hand, merely on an interpretation that the goods or services are in the process of being received and which are certainly to be received under the contract, the benefit of the input tax credit is being denied. If such denial of supply is to be accepted, a converse situation emanates namely

that by virtue of Section 12 or 13, the Government becomes recipient of the tax, despite there being no supply, however, at the same time, under the GST provisions having received the tax, at the threshold, the credit of such tax is being taken away or denied to the registered person. Certainly such consequence is not postulated from the very scheme of the GST legislation. We may thus observe that if we do not read and interpret the provisions of Section 16(2)(b) in the manner as discussed hereinabove, it is also likely to create an anomalous effect on the operation of Section 13(2), namely that the liability to pay tax on services would be required to be reckoned, not on what has been provided under sub-section (2) of Section 13, but only on the deferred date, when the goods or services are actually received, to be reckoned as an incident, at which point of time, the liability to pay tax on services would arise, and not in respect of specific incidents as provided for under sub-section (2). This would create a complete dichotomy, disturbance or friction in the interplay between Section 13(2) and Section 16 of the CGST Act. In our opinion, this can never be the intention of the legislature. Thus, there needs to be a harmonious interpretation of provisions of Section 13 read with the provisions of Section 16. The intention underlying sub-section (1) of Section 16 is not only required to be effected but safeguarded by a meaningful and purposive reading of the provisions of Section 13(2), so as to apply the provisions of sub-section (2)(b) of Section 16, as it stands and intended by the legislature. Any interpretation otherwise in our opinion would cause deleterious effect and a disharmony in the working of these GST provisions. For these reasons, the petitioner was entitled to the input tax credit under the provisions of Section 16 as in the present peculiar facts, merely referring to the provisions of Section 16(2)(b), it could not have been denied to the petitioner."

7.12.4 The applicant has stated in the applicant that the Supplier had raised the first invoice with respect to the supply under question in the FY 2022-23 (March 2023). However, the receipt of last invoice wherein the advances are fully adjusted, was issued in FY 2024-25. One of the conditions specified in Section 16(2) to avail ITC on invoices is the receipt of goods or services or both. However, as per Section 16(4) of the CGST Act,

"(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 thirtieth day of November following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier."

The Applicant states that on a plain reading, time limit to avail ITC on the first invoice raised by the Supplier shall fall on 30 November 2023. On the contrary, the Applicant stated that they would not have fulfilled the conditions to avail such ITC as the receipt of goods or services or both would fall after the above-said time limit. Therefore, the applicant was of the view that they can avail the credit on input tax on receipt of supply of goods or services or both against an invoice, irrespective of the receipt of supply after the last date under Section 16(4) of the CGST Act.

7.12.5 Contrary to the same, we are of the opinion that the provisions of Section 16(4) of the CGST Act, 2017, that specifies the time limit for availment of ITC

applies very much to the instant case, as well, in view of the fact that Section 13(2) of the Act, ibid which discusses about 'Time of Supply of Services' specifies in clear terms that the supply is deemed to have been received, when the payment precedes the provisioning of service, that is to say when advance payments are made. Accordingly, we are of the considered opinion that when an invoice is raised by the supplier of service on receipt of advance towards a contract, ITC shall be availed by the recipient before the thirtieth day of November following the end of financial year to which such invoice pertains or furnishing of the relevant annual return, whichever is earlier, as stipulated under Section 16(4) of the CGST Act, 2017.

7.13 In view of the above, we rule as under:

**Ruling**

1. The Applicant would be eligible for input tax credit proportionate to the extent of steel structural support erected in relation to the secondary steel works that is attributable to the support of HVAC machine and overhead crane movement only, subject to fulfilment of conditions stipulated in Sections 17(5)(c) and 17(5)(d) of the CGST Act, 2017 and the explanation thereunder.

2. The timeline to avail ITC on tax invoice raised by Supplier to bill "Advance Component" of the Contract is already covered under the provisions of Section 16(4) of the CGST Act, 2017, which stipulates that ITC shall be availed by the recipient before the thirtieth day of November following the end of financial year to which such invoice pertains or furnishing of the relevant annual return, whichever is earlier, as discussed in para 7.12 above.



To

M/s. Shibaura Machine India Private Limited,  
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(By RPAD)

**Copy submitted to**

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