

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

ADVANCE RULING NO. UP ADRG 11 /2025 Dated. 21/01/2025

PRESENT:

1. **Shri Amit Kumar, I.R.S.**
Additional Commissioner, Central Goods and Service Tax
Commissionerate, LucknowMember (Central Tax)
2. **Shri Harilal Prajapati**
Joint Commissioner, State Goods and Service TaxMember (State Tax)

1.	Name of the Applicant	M/s Elentec India Private Limited, Plot No. B-37, Sector-80, Phase-II, Noida-201305
2.	GSTIN or User ID	09AADCR2107F1ZQ
3.	Date of filing of Form GST ARA-01	25.08.2023 (received on 28.10.2024)
4.	Represented by	Mr. Virendra Kumar Singh, Consultant GST
5.	Jurisdictional Authority-Centre	Range-24, Div.-Division-V Noida, Commissionerate – Noida.
6.	Jurisdictional Authority-State	Sector – Corporate Sector, Range-Gautambudha Nagar (B) , Zone-Gautambudha Nagar State –Uttar Pradesh
7.	Whether the payment of fees discharged and if yes, the CIN	Yes, ICIC23080900507431

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

1. M/s Elentec India Private Limited, having registered office at Plot No. B-37, Sector-80, Phase-II, Noida-201305 (hereinafter referred as "the applicant") having GSTIN-09AADCR2107F1ZQ, have filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 read with Rule 104 of the CGST Rules, 2017 and Section 97 of UPGST Act, 2017 read with Rule 104 of the UPGST Rules, 2017 in Form GST ARA-01 (the application form for Advance Ruling), discharging the fee of Rs. 5,000/-each under the CGST Act and the UPGST Act.

2. The applicant has submitted an application for Advance Ruling dated 25.08.2023 (received on 28.10.2024) enclosing dully filled Form ARA-01 (the application form for Advance Ruling) along with written statement in the form of attachment. The applicant in his application has sought advance ruling on following question-

- a. *Whether input tax credit (ITC) available to Elentec India Private Limited of GST charged by service provider on canteen facility provided to employees working in the factory?*
- b. *If ITC is available as per question no. (1) above, then this will be available for the factory's Direct Employees (ON ROLL employees) only or this will be available for Contractual Employees (OFF ROLL employees) also?*

3. The question is about applicable GST rate under the provisions of CGST Act and liability to pay GST, hence is admissible under Section 97(2)(a) of the CGST Act 2017. Further, 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. The applicant has submitted statement of relevant facts as under:-

(i) Elentec India Private Limited, are maintaining 'canteen facility' in our all 3-factory premises to comply with the mandatory requirement of maintaining the canteen as per Section 46 of the Factories Act, 1948 and Rule 68 of The Uttar Pradesh Factories Rules, 1950. As per proviso to Section 17(5)(b) of Central Goods and Services Tax Act, 2017 (hereinafter referred as CGST Act, 2017), ITC of GST paid on goods and services or both shall be available where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

(ii) CBIC vide its Circular No. 172/04/2022-GST Dated 06.07.2022 clarified that the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of CGST Act is applicable to the whole of clause (b) of sub-section (5) of section 17 of the CGST Act.

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

a) Applicant is operating under GST registration number GSTIN 09AADCR2107F1ZQ and is a manufacturer of "Parts and accessories for Cellular Mobile Phone" and majority of its manufactured items are being supplied to M/s Samsung India Electronics Pvt. Ltd. Noida.

The process of manufacturing involves Injection Molding, Coating, Sub-assembly, Inspection, Testing, Outward Quality Control (OQC), Packaging and Dispatch etc.

b) Vide CGST (Amendment Act) 2018, clause (b) of sub-section (5) of section 17 of the CGST Act was substituted with effect from 01.02.2019.- After the said substitution, the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act provides as under:

"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 the same to its employees under any law for the time being in force."

c) The said amendment in sub-section (5) of section 17 of the CGST Act was made on the recommendations of GST Council in its 28th meeting. - The intent of the said amendment in sub-section 5 of section 17, was made known to the trade and industry through the Press Note on Recommendations made during the 28th meeting of the GST Council, dated 21.07.2018. It had been clarified as under:

"That scope of input tax credit is being widened, and it would now be made available in respect of Goods or Services which are obligatory for an employer to provide to its employees, under any law for the time being in force."

- d) Accordingly, it is clarified that the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the whole of clause (b) of sub-section (5) of section 17 of the CGST Act.
- e) Further to above, Applicant has around 4500 manpower are working which is evident from the Annual Returns submitted in the O/o the Assistant Director of Factories, Noida, under the Factory Act, 1948. Therefore, it is mandatory on us to maintain 'Canteen Facility' in our all 3-factory premises located in Noida and Greater Noida, to comply with the mandatory requirement as per Section 46 of the Factories Act, 1948 and Rule 68 of the Uttar Pradesh Factories Rules, 1950.
- f) A Circular No. 172/04/2022-GST dated 06-07-2022 was issued by CBIC which contains clarifications on 4 different GST issues out of which 1 issue is 'Clarification on various issues of Section 17(5) of the CGST Act' for which we have filed application under Form ARA-01: -

Clarifications based on the above Circular no. 172/04/2022-GST dated 06-07-2022 are appended below in short for ready reference: -

<i>Clarification on various issues of <u>Section 17(5)</u> of the <u>CGST Act</u></i>	
3. <i>Whether the proviso at the end of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the entire clause (b) or the said proviso is applicable only to sub-clause (iii) of clause (b)?</i>	1. <i>Vide the <u>Central Goods and Service Tax (Amendment Act) 2018</u>, clause (b) of sub-section (5) of section 17 of the <u>CGST Act</u> was substituted with effect from 01.02.2019. After the said substitution, the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the <u>CGST Act</u> provides as under:</i> <i>"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 the same to its employees under any law for the time being in force."</i> 2. <i>The said amendment in sub-section (5) of section 17 of the <u>CGST Act</u> was made based on the recommendations of GST Council in its 28th meeting. The intent of the said amendment in sub-section (5) of section 17, as recommended by the GST Council in its 28th meeting, was made known to the trade and industry through the Press Note on Recommendations made during the 28th meeting of the GST Council, dated 21.07.2018. It had been clarified "that scope of input tax credit is being widened, and it would now be made available in respect of Goods or services which are obligatory for an employer to provide to its employees, under any law for the time being in force."</i>

	3. Accordingly, it is clarified that the proviso after <u>sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act</u> is applicable to the whole of <u>clause (b) of sub-section (5) of section 17 of the CGST Act.</u>
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- g) In the above-mentioned table of the Circular No. 172/04/2022-GST Dated 06.07.2022, it is clarified by the Central Board of Indirect Tax and Custom (CBIC) that the proviso provided after Section 17(5) (b) (iii) is applicable to the whole of the section 17(5) (b). Therefore, in the light of the above clarifications provided by CBIC, it is very clear that Applicant is eligible to take Input Tax Credit (ITC) of the GST charged by the service provider on the 'canteen facility' services provided to its employees working in the factory of Applicant.
- h) Applicant submitted unit wise consolidated 'Annual Returns' of his every unit for the year ended on 31 December 2022 in the office of the Assistant Director of Factories, Noida, In these Annual Return, Average No. of workers employed daily in this period is shown as 5263 Nos. which includes Direct employees 1385 nos. and Contractual employees 3878 nos.
- i) we hereby refer to Order passed by GAAAR in the matter of APPEAL filed by TATA MOTORS LIMITED, GUJARAT against the Order issued by GAAR no. GUJ/GAAR/R/39/2021 dated 30.7.2021. GAAAR issued Order No. "ADVANCE RULING (APPEAL) NO. GUJ/GAAAR/APPEAL/2022/23 Dated 22.12.2022 – in which GAAAR has modified the Order of AAR Gujarat, to the extent it has been in appeal before GAAAR, in case of Tata Motors Limited, is as under: -
- (i) Input tax Credit (ITC) will be available to the appellant on GST charged by the service provider in respect of canteen facility provided to its direct employees working in their factory, in view of the provision of Section 17(5)(b) as amended effective from 01.02.2019. and clarification issued by CBIC vide Circular No. 172/04/2022-GST dated 06.07.2022 read with provisions of Sections 46 of the Factories Act, 1948 and read with provisions of the Gujarat factory Rules, 1963 and clause (ii) below.
- (ii) ITC on the above is restricted to the extent of the cost borne by appellant for providing canteen services to its direct employees but disallowing proportionate credit to the extent embedded in the cost of food recovered from such employees.
6. The application for advance ruling was forwarded to Assistant Commissioner, Central Tax & Central Excise, Division- V Noida vide letter dated 11.11.2024 to offer their comments/views/verification report on the matter. But no comments in the matter was offered.
7. The applicant was granted a personal hearing on 15.01.2025 which was attended by Mr. Virendra Kumar Singh, Consultant GST, the authorized representative of the applicant during which he reiterated the submissions made in the application of advance ruling.

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 Form GST ARA-01 filed by the applicant and observed that the applicant has ticked following issues on which advance ruling required-

(1) Admissibility of input tax credit of tax paid or deemed to have been paid.

At the outset, we find that the issue raised in the application is squarely covered under Section 97(2) of the CGST Act 2017. We therefore, admit the application for consideration on merits.

10. We have gone through the submissions made by the applicant and have examined the same. We observe that the applicant has sought advance ruling on the following questions-

a. *Whether input tax credit (ITC) available to Elentec India Private Limited of GST charged by service provider on canteen facility provided to employees working in the factory?*

b. *If ITC is available as per question no. (1) above, then this will be available for the factory's Direct Employees (ON ROLL employees) only or this will be available for Contractual Employees (OFF ROLL employees) also?*

11. Applicant has a manufacturing unit and has employed more than 250 employees in his all three units. In accordance with Section 46 of Factories Act, 1948 and Rule 68 of The Uttar Pradesh Factories Rules, 1950, it is obligatory for him to provide canteen facilities to the employees within the factory premises.

12. Applicant submitted unit wise consolidated 'Annual Returns' of his every unit for the year ended on 31 December 2022 in the office of the Assistant Director of Factories, Noida, In these Annual Return, Average No. of workers employed daily in this period is shown as 5263 Nos. which includes Direct employees 1385 nos. and Contractual employees 3878 nos. Therefore, it is mandatory on us to maintain 'Canteen Facility' in our all 3-factory premises located in Noida and Greater Noida, to comply with the mandatory requirement as per Section 46 of the Factories Act, 1948 and Rule 68 of the Uttar Pradesh Factories Rules, 1950.

13. Applicant has also referred to Circular No. 172/04/2022-GST dated 06-07-2022 was issued by CBIC which contains clarifications on 4 different GST issues out of which 1 issue is 'Clarification on various issues of Section 17(5) of the CGST Act' for which he has filed application under Form ARA-01.

14. Section 46 of The Factories Act, 1948 is reproduced as under:

Canteens.—(1) The State Government may make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers.

From the 'Annual Returns' submitted by the applicant, it is clear that it has more than 250 workers ordinarily employed. Hence, it is obligatory for the applicant to provide the Canteen facility.

15. Now we have to decide the issue of eligibility of ITC on GST paid on Canteen Service on the food supplied to employees of the applicant company, we refer to Section 17(5)(b) of CGST Act, 2017, reads as follows:-

Section 17(5)(b)

"(b) the following supply of goods or services or both-

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life-

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply.

ii) membership of a club, health and fitness centre: and

iii) travel benefits extended to employees on vacation such as leave or home travel concession:

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 the same to its employees under any law for the time being in force."

16. We find that the proviso of Section 17 (5)(b) stipulates that ITC shall be available on the GST paid where it is obligatory to provide a benefit for an employer to its employees in terms of any law for the time being in force. We also notice that CBIC vide Circular No. Circular No. 172/04/2022-GST dated 06.07.2022 has been issued wherein clarifications on various issue pertaining to GST has been provided. In the above Circular, at Sl. No.3 of Para 2 clarification has been provided on the issue as to whether the proviso at the end of clause (b) of Section 17(5) of CGST Act is applicable to the entire clause (b) or only to sub-clause (iii) of clause (b). It has been clarified by the Board that vide the CGST (Amendment Act), 2018, clause (b) of Section 17(5) was substituted with effect from 01.02.2019 on the recommendation of GST Council's 28th meeting and accordingly, the proviso after sub-clause (iii) of Section 17(5)(b) of CGST Act, is applicable to whole clause (b) of Section 17(5). The relevant portion of above clarification is reproduced below:

<i>Clarification on various issues of <u>Section 17(5)</u> of the <u>CGST Act</u></i>		
3.	<i>Whether the proviso at the end of <u>clause (b)</u> of <u>sub-section (5)</u> of <u>section 17</u> of the <u>CGST Act</u> is applicable to the entire clause (b) or the said proviso is applicable only to sub-clause (iii) of clause (b)?</i>	<i>1. Vide the <u>Central Goods and Service Tax (Amendment Act) 2018</u>, <u>clause (b)</u> of <u>sub-section (5)</u> of <u>section 17</u> of the <u>CGST Act</u> was substituted with effect from 01.02.2019. After the said substitution, the proviso after <u>sub- clause (iii)</u> of <u>clause (b)</u> of <u>sub-section (5)</u> of <u>section 17</u> of the <u>CGST Act</u> provides as under:</i> <i>"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 the same to its</i>

	<i>employees under any law for the time being in force."</i> <i>2. The said amendment in <u>sub-section (5) of section 17 of the CGST Act</u> was made based on the recommendations of GST Council in its 28th meeting. The intent of the said amendment in <u>sub-section (5) of section 17</u>, as recommended by the GST Council in its 28th meeting, was made known to the trade and industry through the Press Note on Recommendations made during the 28th meeting of the GST Council, dated 21.07.2018. It had been clarified "that scope of input tax credit is being widened, and it would now be made available in respect of Goods or services which are obligatory for an employer to provide to its employees, under any law for the time being in force."</i> <i>3. Accordingly, it is clarified that the proviso after <u>sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act</u> is applicable to the whole of <u>clause (b) of sub-section (5) of section 17 of the CGST Act</u>.</i>
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17. In view of above legal position clarified by CBIC, as second proviso to Section 17(5)(b) inserted vide CGST Amendment Act, 2018 effective from 1.2.2019, is applicable to the whole of clause (b) of sub-section (5) of Section 17 of the CGST Act, Input Tax Credit will be available to the appellant in respect of food & beverages as canteen facility, is obligatorily to be provided under the Factories Act, 1948, to its employees working in the factory. Input Tax Credit will be available in respect of such services provided by canteen facility to its direct employees but not in respect of other type of employees including contract employees/workers, visitors etc.

18. Now we rely upon the judgement of Hon'ble High Court of Bombay in the case of Commissioner of Central Excise, Nagpu Versus Ultratech Cement Ltd., [2010 (260) E.L.T. 369 (Bom.)] wherein it was held that "*Once the service tax is borne by the ultimate consumer of the service, namely the worker, the manufacturer cannot take credit of that part of the service tax which is borne by the consumer.*" The judgement was in context as to whether manufacturer can avail credit of Service Tax in cases where the cost of the food is borne by the worker. The ratio laid down in the said case is also applicable to the present case where part of cost for providing canteen services is recovered by the appellant from its employees. We find that the ITC on GST charged by the canteen service provider will be available only to the extent of cost borne by the appellant, for providing the canteen services only to its direct employees.

19. In view of the above discussions, we, both the members pass the following ruling
In view of the above discussions, we pass the ruling as follows:

RULING

Question. A. Whether input tax credit (ITC) available to Elentec India Private Limited of GST charged by service provider on canteen facility provided to employees working in the factory?

Answer: Yes, ITC on GST paid on canteen facility is admissible to M/s Elentec India Private Limited under Section 17 (5)(b) of CGST Act on the food supplied to employees of the company subject to the condition that burden of GST have not been passed on to the employees of the company.

Question. B. If ITC is available as per question no. (1) above, then this will be available for the factory's Direct Employees (ON ROLL employees) only or this will be available for Contractual Employees (OFF ROLL employees) also?

Answer: Available to Direct Employees only.

20. 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.

21.



(Harilal Prajapati)
Member of Authority for Advance
Ruling



(Amit Kumar)
Member of Authority for Advance
Ruling

To,

M/s Elentec India Private Limited,
Plot No. B-37, Sector-80, Phase-II,
Noida-201305

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 Principal Commissioner, CGST & C. Ex, Noida, GST Bhawan, Plot No. C-232A/2 to 232A/3, Sector-48, Noida.201301.
4. The Deputy/Assistant Commissioner, CGST & Central Excise Division, E-5, Sector-1 Noida,201301
5. Through the Additional Commissioner...ZONE-GBN....., 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.