| **GUJARAT AUTHORITY FOR ADVANCE RULING<br>GOODS AND SERVICES TAX<br>A/5, RAJYA KAR BHAVAN, ASHRAM ROAD,<br>AHMEDABAD – 380 009.** | NATION TAX MARKET |
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ADVANCE RULING NO. GUJ/GAAR/R/2022/38
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2022/AR/19)

Date: 10/08/22

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| Name and address of the applicant | : | M/s. Troikaa Pharmaceuticals Limited, GF-1, Ground Floor, Commercial House-1, Ground Floor, Satya Marg, Bodakdev, Ahmedabad, Gujarat- 380054 |
| GSTIN/ User Id of the applicant | : | 24AABCT6866H1Z4 |
| Date of application | : | 22/3/22 |
| Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised. | : | *(d) and (e)* |
| Date of Personal Hearing | : | 5/5/22 and 2/8/22 |
| Present for the applicant | : | Chintan Shah, M.D of Pankaj Shah & Associates, Sandip Gupta, CA |

Brief facts :

M/s Troikaa Pharmaceuticals Limited, hereinafter referred to as M/s Troikaa for the sake of brevity, submits that it provides canteen facilities to its employees and workers as per Factories Act, 1948. Section 46 of the said Act, stipulates that any factory employing more than 250 workers is required to provide a canteen facility to its employees. As a result, the company makes arrangements for providing the food (lunch and dinner) for the employees and workers at the plant and godown location.

2. M/s Troikaa made arrangement of food (lunch and dinner) through an outside party, who prepares the food and supplies it to the company's employees and the contractual workers. The food supplier vendor raises an invoice of the food bill as per the agreed billing frequency (said invoice is raised on the basis of the actual number of the food plates consumed) by charging 5% GST. A copy of the invoice and the agreement entered with the food supplier vendor is attached herewith as a reference as per Exhibit - A.

3. M/s Troikaa provides the canteen facility at a subsidized rate of 50% (i.e. @ Rs.30 per plate amount as the amount charged by the food supplier vendor is Rs.60) to its employees and contractual workers. The food supplier raises the invoice for the full amount on the company against food supplied to the employees. The Company bears 50% of food amount and recovers the balance 50% of the food amount from the company

employee's salary pay out. The Company pays full invoice value raised to the food supplier. In case of the security service contractor workers, the food supplier vendor raises the bill for the 50% amount (i.e. @ Rs.30 per plate) + GST 5% only as the balance 50% of food amount (i.e. @ Rs.30 per plate) is being directly paid by the individual worker to the vendor.

4. M/s. Troikaa has referred Section 7(1) of CGST Act, which specify supply. From the definition of 'Supply' it is clear that the levy under CGST Act, 2017 is on "supply" of goods or services or both. The word "such as" used preceding the words sale, transfer, barter, exchange, etc. indicates that the forms of supply shall be those which are enumerated therein or of similar character but not of other dissimilar forms of supply. The expression "such as" indicates the character of the transactions.

5. M/s Troikaa has submitted that the CGST (Amendment) Act, 2018 introduced sub section (1A) to Section 7 of the CGST Act, 2017 with retrospective effect 01-07-2017 in place of Section 7 (l)(d), which seeks to levy tax on certain declared "supply" of goods or services referred to in Schedule II of the CGST Act, 2017. As per Section 7 (1A), where certain activities or transactions, constitute a supply in accordance with the provisions of sub- section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II wherein it has been prescribed that, a particular activity shall be treated either as Supply of goods or as Supply of services. However, Schedule II comes into play only if an activity is qualifying as supply under Sec 7 of CGST Act. Besides above, Services by an employee to the employer in the course of or in relation to his employment are activities or transactions which shall be treated as neither supply of goods nor supply of services under Schedule III of Section 7 of CGST Act 2017.

6. The applicant submits that recoveries for providing canteen facility is not covered under the ambit of "supply" under Clauses of Section 7 of the CGST Act, 2017 and in this regard submitted as follows:

(i) From plain reading of the provisions of section 7 (1) of the Act, it is clear that unless all conditions such as (i) there should be involvement of two persons (ii) it must covered under any specified form such as sale, transfer etc. (iii) it should made for consideration (iv) it should made in the course or furtherance of business have been satisfied any transaction or activity cannot be treated as supply:

(ii) Further GST is applicable on "outward supply" by the supplier to recipient. Section 2(83) of the CGST Act defined "outward supply" in relation to a taxable person, means supply of goods or services or both, whether by sale, transfer, barter, exchange, licence,

rental, lease or disposal or any other mode, made or agreed to be made by such person "in the course or furtherance of business;"

(iii) In light of above provisions, for a transaction to qualify as supply in terms of Section 7 of the Central Goods and Services Tax Act, 2017 (CGST Act), it should essentially be made in the course or furtherance of business.

(iv) Section 2(17)(a) and (b) of the CGST Act: Section 2 (17) defined "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; As per clause (b) of Section 2 (17), business also includes any activity which is in connection with or incidental or ancillary to the activities covered under clause (a) of Section 2 (17) of the CGST Act.

(v) The expression "in the course or furtherance of" has not been defined or elucidated under the GST Act, 2017. In the absence of clarification on the expression recourse may be taken to the general principles of interpretation for understanding of the same. Based on the plain reading of the expression it is generally construed that any activities undertaken by a person in connection with or having a proximate and close nexus to its business is in the course or furtherance of business.

(vi) Further, view is taken that Section 2(17) of the CGST Act, 2017 read with Section 7(1) of the CGST Act, 2017 are contrary in nature. Where supply includes all forms of supply of goods or services or both such as sale, barter, transfer, exchange, license, rental, lease or disposal for a consideration in the course or furtherance of business, the definition of business is so wide that it covers all types of transaction. As clarified above, "in the course or furtherance of" is nowhere elucidated under GST laws; general interpretation needs to be undertaken which means any activities undertaken by a person in connection with or having a nexus to its business. If the intention of the law was to cover all transactions under business, then there is no need to include phrase "in the course or furtherance of" in the definition of supply.

(vii) Further, business, as defined in section 2(17), also includes any activity or transaction in connection with or incidental or ancillary to any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity. Again, the words "incidental or ancillary" have nowhere been elucidated under the GST Act, 2017. "Ancillary" according to the Concise Oxford English Dictionary (10th ed.) means something providing support to the primary activities of an organisation; something which is additional or subsidiary. Where as providing canteen facility through third party contractor to its employees and contract employees under obligation of section 46 of the

Factories Act 1948 cannot be hold as something providing support to primary activities that manufacturing of drugs and pharmaceutical goods, sales and export thereof.

(viii) Further the relevant extract of FAQ on GST issued by the Govt. elaborates further the scope of the term "in the course or furtherance of business" as follows. (i)Is the activity, a serious undertaking earnestly pursued? (ii) Is the activity is perused with reasonable or recognizable continuity? (iii) Is the activity conducted in a regular manner based on sound and recognizable business principles? (iv) Is the activity predominantly concerned with the making of taxable supply for consideration/profit motive?

(ix) The Applicant company is engaged only in the business of pharmaceutical products and is maintaining canteen under obligation as provided under section 46 of the Factories Act, 1948. Even if the said canteen facility were not provided, the pharmaceutical business of the Applicant would still be continuing. Thus, providing canteen facilities to its employees is not the business of the Applicant and the same cannot qualify as supply under section 7 of CGST Act, 2017.

(x) Applicant has place reliance on the following decisions :

(i) Base Repair Organisation (Now Naval Dockyard), Vishakhapatnam Vs. State of A.P. reported in 1993 53 STC 223

(ii) State of Gujarat vs. Raipur Manufacturing Co. Ltd. (Civil Appeal No. 603 of 1966)

(iii) Deputy Commissioner of Commercial Taxes vs. Thirumagal Mills Ltd. [1967 (20) STC 287 Mad],

(iv) Morarji Bros. (I&E) Pvt. Ltd v. State of Maharashtra 1995 (99) STC 117

(v) Panacea Biotech Limited vs. Commissioner of Trade and Taxes [(2013) 59 VST 524 (Del.)]

(vi) Bombay High Court [State of Bombay v. Ahmedabad Education Society (1956) 7 STC 497 (Bom.)]

(vii) In the Press Release dated July 13, 2017, CBIC have clarified that the sale of old gold by an individual to a jeweller does not attract GST as it is not in the course or furtherance of his business. From the above clarification, it seems that the intention of the government is not to treat all transactions as "Supply" unless they are carried in the normal course of the business activities.

(xi) It is submitted by the applicant that in view of above provisions of law, press release and judiciary decisions relied upon, it is submitted that as per clause (b) of Section 2 (17), business also includes any activity which is in connection with or incidental or ancillary to the activities covered under clause (a) of Section 2 (17) of the CGST Act. In this regard activities which are having direct nexus with the main business can be said to be ancillary or incidental. However, canteen facility is not related to or connected with the principal business of supply of pharmaceutical goods. Hence, the same activity is not incidental or ancillary to the main business of the Applicant. Thus, said canteen facility provided through third party canteen service provider to employees and contract workers under

obligation of section 46 of Factories Act 1948 and collection / recovery of employees share to make payment to canteen contractor bill cannot be taxed under GST.

7. The applicant has submitted that recovery of 50% share of food bill from employees or contractor against supply of foods by third party canteen service provider and utilization of the same for payment bills of Canteen Service Provider is not a consideration in the hands of Applicant against any supply.

7.1 It is submitted that Section 7 (1) of CGST Act, 2017 provides that the expression "supply" includes all forms ..... for a consideration by a person in the course or furtherance of business. That means one of the essential conditions to be satisfied that supply must be for a consideration. Consideration is defined under section 2(31) of CGST Act, 2017 and also to the definition of the expression in section 2(d) of the Contract Act 1872. The Supreme Court in case of Commissioner of Service Tax Vs. M/s Bhayana Builders, 2018 (2) TMI 1325, while deciding the appeal filed by the Department against the aforesaid decision of the Larger Bench of Tribunal, has observed that any amount charged which has no nexus with the taxable service and is not a consideration for the service provided does no become part of the value which is taxable under Section 67 of Finance Act. The aforesaid view was reiterated by the Supreme Court in Union of India Intercontinental Consultants and Technocrats, 2018 (10) GSTL 401(SC) and it was observed that since service tax is with reference to the value of service, as a necessary corollary, it is the value of the services which are actually rendered, the value whereof is to be ascertained for the purpose of calculating the service tax payable thereupon.

7.2 Further applicant has submitted that what follows from the aforesaid decisions of the Supreme Court in Bhayana Builders and Intercontinental Consultants, and the decision of the Larger Bench of the Tribunal in Bhayana Builders is that "consideration" must flow from the service recipient to the service provider and should accrue to the benefit of the service provider and that the amount charged has necessarily to be a consideration for the taxable service provided under the Finance Act. Any amount charged which has no nexus with the taxable service and is not a consideration for the service provided does not become part of the value which is taxable. The same principle of law also applicable under the GST Laws which may be called "contractual reciprocity and there must be direct and immediate link / nexus between supply made and consideration received ".

7.3 The applicant submits that the above principle based upon which decisions held also equally applicable in the case of applicant. Further it is submitted that to constitute a supply under section 7(1) of CGST Act, 2017 there must be reciprocity and direct and immediate link / nexus between supply and consideration.

7.4 The applicant has relied upon following decisions:

(i) Bai Mamubai Trust, Vithaldas Laxmidas Bhatia, Smt. Indu Vithaldas Bhatia vs. Suchitra (109 taxmann.com 200) /2019 (31) G.S.T.L. 193 (Bom.)

(ii) The ruling of Maharashtra Appellate Authority for Advance Ruling in the case of Vijay Baburao Shirke [2020] 120 taxmann.com 103 (AAARMaharashtra) reiterated the fact that there must be direct nexus between the supply made and the consideration made otherwise it cannot be termed as supply within the provisions of the GST and consequently outside the scope of the GST.

(iii) Cricket Club of India v. Commissioner of Service Tax [2015 (40) S.T.R. 973], the Hon'ble CESTAT (Mumbai Bench)

(iv) Mormugao Port Trust v. Commissioner of Customs, Central Excise and Service Tax, Goa; 2016 TIOL 2843 CESTAT Mum.

(v) Ku. Sonia Bhatia v. State of U.P. and Others, AIR 1981 SC 1274

7.5 The applicant has submitted that in the present case, they have made an arrangement for providing food (lunch and dinner) through an outside party under obligation under Factories Act 1948, who prepares the food and supplies it to the company's employees and the contractual workers. The food supplier vendor raises an invoice of the food bill as per the agreed billing frequency (said invoice is raised on the basis of the actual number of the food plates consumed by charging 5% GST. The Company bears 50% of food amount and recovers the balance 50% of the food amount from the company employee's salary pay out and utilized same for payment of the bill of canteen service provider. The applicant is not the supplier of food to employees and contract workers and only providing canteen facility as a facilitator. Neither any intent to make profit nor any element is being retained as profit from the amount recovered from the employees pay out as their share (50% of food value). There is no reciprocity and direct and immediate link / nexus between supply of foods made by the third party canteen service provider to employees and recovery of amount from the employees and contract workers to treat it as consideration received by Applicant against any supply which is liable to GST.

8. The applicant submits that without prejudice to the above, the canteen facility provided by them is excluded from the scope of supply in terms of Clause (a) of Section 7 (2) of the CGST Act.

8.1 It is submitted that the canteen facility provided by the Applicant is specifically excluded from the coverage of 'supply' under GST as per Clause (a) of Section 7 (2) of the CGST Act which begins with a non-obstante clause and overrides Section 7 (1) of the

CGST Act. Entry (1) of Schedule- III to Section 7 of CGST Act, 2017 covers services provided by employee to its employer in the course of employment or in relation to employment. As per clause I of schedule III of GST Act 2017, services by an employee to the employer in the course of or in relation to his employment' shall not be treated as supply and hence such services are out of the purview of GST.

8.2. It has been further submitted that Central Board of Indirect Taxes and Customs in its press release on dated 10th July 2017 clarified as follows :

xxxxxx. Another issue is the taxation of perquisites. It is pertinent to point out here that the services by an employee to the employer in the course of or in relation to his employment is outside the scope of GST (neither supply of goods nor supply of services). It follows there from that supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST. Further, the input tax credit (ITC) scheme under GST does not allow ITC of membership of a club, health and fitness centre [section 17 (5) (b) (ii)]. It follows, therefore, that if such services are provided free of charge to all the employees by the employer, then the same will not be subjected to GST, provided appropriate GST was paid when procured by the employer. The same would hold true for free housing to the employees, when the same is provided in terms of the contract between the employer and employee and is part and parcel of the costto- company (C2C).

It is submitted that Supply by employer to employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST. So, in view of above press release even if any service provided by the applicant as an employer to employee / contract workers will be out of preview of GST only if it is be provided in the course of employment.

8.3 The applicant has submitted that from above, any activity or transaction, in this case, canteen services, which is undertaken in the course of employment or in connection with employment has been specifically excluded from the ambit of supply. By virtue of Section 7 (2) read with Entry (1) of Schedule III, the canteen facility does not amount to supply. Also, as per the Press release issued by the Ministry of Finance dated 10 July 2017 any services provided by the employer to the employees in terms of the contractual agreement entered into between the employer and employee will not be subjected to the GST.

9. The applicant has submitted that without prejudice to the above, it is settled position under GST regime that employee recoveries do not amount to 'supply' and not liable for GST. It is also submitted that it is now settled position under GST Regime that recovery made from employees for any facility does not amount to supply under GST laws.

9.1 The applicant has placed reliance on the following Rulings by the Authority of Advance Rulings and Appellate Authority of Advance Ruling under GST Laws in the context where it is held that recovery / collection of employee portion of canteen charges / food provided by canteen service provider is not a supply and liable to GST.

(i) Tata Motors Ltd. [2021] 129 taxmann.com 277 (AAR - GUJARAT)

(ii) Amneal Pharmaceuticals Pvt. Ltd. (GST AAAR Gujarat), Appeal Number: Advance Ruling Appeal No. GUJ/GAAAR/APEEAL/2021/07, Date of Judgement/Order : 08/03/2021

(iii) Emcure Pharmaceuticals Limited (GST AAR Maharashtra), Advance Ruling No. GST-ARA-119/2019-20/B-03, dated.4th January 2022

(iv) Jotun India Pvt. Ltd . 2019 (29) G.S.T.L. 778 (A.A.R. - GST) Order No. GST-ARA-19/2019-20/B-108- Mumbai, dated 4-10-2019

(v) POSCO India Pune Processing Centre Pvt. Ltd, 2019 (21) G.S.T.L. 351(AAR-GST)

(vi) Tata Motors Limited (GST AAR Maharashtra) Advance Ruling No. GST-ARA-23/2019-20/B-46 - Date of Judgement / Order: 25/08/2020

(v) North Shore Technologies Private Limited (GST AAR Uttar Pradesh) Appeal Number: Order No. 59-Date of Judgement/Order : 29/06/2020

(vi) Integrated Decisions and Systems India Pvt Ltd (GST AAR Maharashtra) -Appeal Number: Advance Ruling No. GST-ARA- 116/2019-20/B-113 -Date of Judgement/Order: 16/12/2021

(vii) Emcure Pharmaceuticals Limited (GST AAR Maharashtra), Appeal Number: Advance Ruling No. GST-ARA-119/2019-20/B-03, dated.4th January 2022

10 The applicant has submitted that in view of the above facts, law and judiciary decisions and rulings by AAR / AAAR, they do not supply any goods or services to its employees or contract workers against the amount recovered / collected from the employees and contractor bills. They recovers employees' portion of amount and pays the consolidated total amount, which includes their share of amount also, to the Canteen Service Provider towards the foodstuffs provided to employees by the Canteen Service Provider. They neither keeps any margin in this activity of collecting employees' portion of amount nor makes any separate supply to the employees. Furthermore, submitted that it is not the applicant who is supplying the foods or canteen service to its employees, but it is a third party who is supplying the foods or canteen service to the employees of the company. As the applicant is not carrying out any activity but only collecting employees' portion of amount to pay to the Canteen Service Provider, such transactions are without involving any 'supply' from the company to its employees and is therefore not leviable to Goods and Services Tax.

10.1 It has been further submitted by the applicant that the collection of the portion of employees' / workers share and paying to Canteen Service Provider, a third party, which

is nothing but the facility provided to employees, and an obligation under section 46 of Factories Act 1948 without making any profit and working as mediator between employees / workers and the Canteen Service Provider / Agency. So, the Goods and Services Tax is not applicable on the activity of collection of employees' / workers portion of amount by the applicant, without making any supply of goods or service by the appellant to its employees.

10.2 The Applicant has submitted that it is their bonafide believe that collection of employees portion of the amount towards foodstuff supplied by the third party / Canteen Service Provider for their employees is not an activity which is incidental or ancillary to the activity of manufacturing of drug and pharmaceutical goods, sale its sale and export, nor can it be called an activity done in the course of or in furtherance of such business as it is not integrally connected to the business in such a way that without this the business will not function. Hence, not liable to levy of Goods and Service Tax.

11. The applicant submits that the availability of the input tax credit on food bill, since providing this canteen facility is mandatory as per the Section 46 of the Factories Act, 1948.. As per Section 16(1) of the CCST Act, 2017, 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.

11.1 Section 17(5)(b) of CGST Act, 2017 reads as follows: -

"(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 insurance and health insurance:

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."

11.2 The applicant has submitted that moreover, Section 17(5)(b) of the CGST Act, 2017 deals with blockage of the input tax credit on food and beverages and outdoor catering. However, a provision to this clause was inserted w.e.f. 01.02.2019, wherein input tax credit shall be available, where it is obligatory on part of the employer to provide service to its employees under any law for the time being in force. In this case, it is obligatory to provide canteen facility as per the Factories Act, 1948, then input tax credit shall be available.

11.3 the applicant has submitted that in the case of M/s Hindustan Coca Cola Beverages Pvt. Ltd. v/s CCE, reported in 2014 (12) TMI 596 – (CESTAT – Mumbai) wherein the Hon'ble CESTAT, Mumbai Bench held that post 2011, catering service is excluded from input service definition only when such service is primarily for personal use or consumption of any employee. When the company has borne the cost of catering and not recovered from the employees, then in that case, it cannot be treated as such catering service is primarily for personal use or consumption of employee and accordingly, CENVAT credit is allowed. In other words, catering service would be treated as primarily used for consumption of employee only when any cost of catering is recovered from the employees of the company. So in view of above GST paid on applicants share of payment for foods supplied to employees shall be eligible for availment of Input Tax Credit

11.4 The applicant has submitted that in view of above facts, provisions of law and judiciary decisions , it is bonafide believe that the on the amount recovered by the company, Troikaa Pharmaceuticals Limited, from employees or contractual workers, when provision of third-party canteen service is obligatory under section 46 of the Factories Act, 1948 is not liable to GST and eligible for availability of the input tax credit on food bill, since providing this canteen facility is mandatory as per the Section 46 of the Factories Act, 1948.

15. Question on which Advance Ruling sought:

1. Whether GST shall be applicable on the amount recovered by the company, Troikaa Pharmaceuticals Limited, from employees or contractual workers, when provision of third-party canteen service is obligatory under section 46 of the Factories Act, 1948?

2. Whether input tax credit of GST paid on food bill of the Canteen Service Provider shall be available, since providing this canteen facility is mandatory as per the Section 46 of the Factories Act, 1948?

**Personal Hearing:**

16. Personal hearing granted on 5-5-22 and 2-8-22 was attended by Shri Chintan Shah, M.D and Shri Sandip Gupta, CA and they reiterated the submission. On being specifically asked Shri Chintan Shah stated that in the company more than 250 employees are on pay rolls, therefore it is mandatory to provide the canteen facility to the employees of the

applicant company. Shri Chintan Shah has submitted the details of employees who are in payrolls of the applicant company.

**Additional Submission**

17. The applicant vide letter dated 8-8-2022 has submitted the following :

(i) Applicant company has 288 workers on his payrolls and enclosed the payroll master of all the 288 employees containing details viz. name, address, designation, PAN, Aadhar, UAN etc.

(ii) Applicant company has also 223 employed workers (approx.) on contractual basis and submitted the sample copies of bill raised by the contractor along with details of the worker deputed by him.

(iii) The number of workers employed in the company is crossing the statutory limit of 250 workers, hence company is under legal obligation to provide and maintain the facility of canteen for all of its workers.

(iv) CBIC vide circular No. 172/04/2022-GST dated 6-7-2022 has clarified the taxability of GST in case of relationship between employee and employer and same is reproduced as under:

> *Issue: Whether various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and employee are liable for GST.*
>
> *Clarification:*
>
> *1. Schedule III to the CGST Act provides that "services by employee to the employer in the course of or in relation to his employment" will not be considered as supply of goods or services and hence GST is not applicable on services rendered by employee to employer provided they are in the course of or in relation to employment.*
> *2. Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment. It follows therefrom that perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee,* ***will not be subjected to GST*** *when the same are provided in terms of the contract between the employer and employee.*

(v) It has been clarified that any prerequisite provided by employer to employee in terms of contractual agreement are not liable to GST. Hence this circular has settled the position which was many times accepted by the authority of Advance Ruling of various states including Gujarat.

(vi) CBIC has clarified the issue of admissibility of ITC under the clause (b) of sub-section 5 of Section 17 of the CGST Act, in its circular No. 172/04/2022-GST dated 6-7-2022. Clarification is as under:

*Issue:*

*Whether the proviso at the end of clause (b) of sub-section (5) of section17 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)?*

*Claification:*

*1.Vide the Central Goods and Service Tax (Amendment Act) 2018, clause(b) of sub-section (5) of section17of 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 section17 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.*

*2. The said amendment in sub-section (5) of section 17 of the CGST Act was made based on the recommendations of GST Council in its 28th meeting. The intent of the said amendment in sub-section (5) of section17, 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."*

*3. Accordingly, it is clarified that the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17of the CGST Act is applicable to the whole of said clause (b) of sub-section(5) of section 17 of the CGST Act.*

(v) It is crystal clear that when the any of the expenditure as mentioned in clause (b) of Section 17(5) is obligatory on the part of employer, its credit is allowable and it cannot be considered as block credit forming part of Section 17(5).

**DISCUSSION AND FINDINGS:**

18. We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by authorised signatory, during the personal hearing proceedings on 2-8-22 before this authority . We also considered the issue involved, on which advance ruling is sought by the applicant, relevant facts & the applicant's interpretation of law.

19. At the outset we would like to make it clear that the provisions of CGST Act and GGST Act are in parimateria and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the GGST Act.

20. We find M/s Troikaa has arranged a canteen facility for its employees, which is run by a Canteen Service Provider. As per their arrangement, part of the Canteen charges is borne by M/s Troikaa whereas the remaining part is borne by its employees. The said employees' portion canteen charges is collected by M/s Troikaa and paid to the Canteen Service Provider. M/s Troikaa submitted that it does not retain with itself any profit margin in this activity of collecting employees' portion of canteen charges.

20.1 M/s Troika vide letter dated 8-8-2022 has submitted that in its factory total 288 employees are in payroll and details of all the employees have been submitted vide Annexure-1. All the employees are working in Applicant Company in terms of contractual agreement entered into between employer and the employee.

20.2 We find that CBIC vide Circular No. 172/04/2022-GST dated 6-7-22 has issued following clarification on the issue whether GST is leviable on the benefit provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee :

*Clarification*

*1. Schedule III to the CGST Act provides that "services by employee to the employer in the course of or in relation to his employment" will not be considered as supply of goods or services and hence GST is not applicable on services rendered by employee to employer provided they are in the course of or in relation to employment.*

*2. Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment. It follows therefrom that perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee,* ***will not be subjected to GST*** *when the same are provided in terms of the contract between the employer and employee.*

20.3 We are not inclined to accord these activities provided by M/s Troikaa to its employees to be an activity made in the course or furtherance of business to deem it a Supply by M/s Troikaa to its employees in view of the above clarification and therefore amount collected by M/s Troikaa from employees towards canteen charges in terms of the contractual agreement in lieu of providing canteen service i.e. food is not liable to GST.

**Applicablity of GST on the amount recovered by the M/s Troikaa Pharmaceuticals Limited, from contractual workers employed by independent contractors:-**

21. M/s Troika vide letter dated 8-8-2022 has submitted that company has also 223 employed workers (approx.) on contractual basis and has submitted the sample copies of bill raised by the contractor along with details of the workers deputed by him. We find that Troikaa is providing food at subsidized rate to their contractual workers i.e. 50% of the total amount of food is being borne by Troikaa and residual 50% amount is collected from Contractual worker. The contractual workers are not employees of the company but

they are working in the company through a contract. Theses contractual workers do not form part of the 'employee' as they are not on the pay roll of the company. The term 'contract labour' under Contract Labour (Regulation and Abolition) Act, 1970 ("CLRA") means a person who is hired in or in connection with the work of an establishment by or through a contractor. It is important to note that the word, 'hire', as used in the Act, has a significant connotation and it is not equivalent to an employer-employee relationship. A person is deemed to have been employed as contract labour when he is hired in, or in connection with a particular work of the principal employer. Where a person is 'hired' specifically for the work of an establishment, his scope of work does not extend beyond the work of that establishment and he is considered to be a contract labour.

21.1 M/s Troikaa is mandated to provide canteen service to their employees since there are more than 250 employees. Section 46 of the Factories Act, 1948 stipulates the workers who are employed in the company's pay roll and not covered contractual workers. Section 46 of the Factories Act, 1948 is reproduced as under:

*46. 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.]*

*(2) Without prejudice to the generality of the foregoing power, such rules may provide for—*

*(a) the date by which such canteen shall be provided;*

21.2 The term 'worker' is defined under Section 2(I) of Factories Act 1948 which is reproduced as under :

*""worker" means a person employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not], in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process but does not include any member of the armed forces of the Union];*

21.3 The contractual worker in the factory are for carrying out the activity which are either directly or indirectly related to manufacturing activity. The contractual worker in the instant case, is under scope of definition of "Worker" stipulated under Section 2(I) to be read with Section 46 of the Factories Act, 1948.

21.4 The term 'employed' is not defined under the GST, therefore, we refer to the dictionary meaning. The Law Lexicon says that the word 'employed' means engaged or occupied in the performance of work or hired to perform labour. Security Firm/ Contractor pays the salary to the contractual worker i.e. Security personal. Theses contractual worker are supplied by the contractor to M/s Troika for carrying out activity in the premises.

21.5 CBIC in Circular No. 172/04/2022-GST dated 6-7-22 has clarified, *that perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee,* ***will not be subjected to GST*** *when the same are provided in terms of the contract between the employer and employee.* In the present case contractual agreement is between contractor and security personal being employer and employee respectively. The test for establishing an employer-employee relationship as laid down by the Apex Court in Balwant Rai Saluja vs. Air India Ltd. is, complete administrative control, which is decided by several factors, including, among others-

who appoints the workers;

who pays the salary/remuneration;

who has the authority to dismiss;

who can take disciplinary action;

whether there is continuity of service; and

extent of control and supervision i.e. whether there exists complete control and supervision.

21.6 M/s Troika has submitted the sample copy of Bill issued by labour contractor namely M/s Clean India Services and M/s Utility Labour Suppliers. Sample copy of Bill No.426/KLL/2021-22 dated 6-6-22 issued by M/s Clean India Services is reproduced as under :

Since : 1999 GATIN : 24BRBPM3275N1ZI

Any where, Any time

# CLEAN INDIA SERVICES

HK & All Type of Man power Supply is Our Services

## TAX INVOICE ORIGINAL COPY

| | | | |
|---|---|---|---|
| Name of Contractor | Clean India Services | Buyer : TROIKA PHARMACEAUTICALS LTD. | |
| Bill No | 426 /KLL/ 2021-22 | THOAL - TA : KADI , DIST- MEHSANA | |
| Bill Date | 06-Jun-22 | | |
| Bill Period | 01-05-2022 to 31-05-2022 | | |
| GST IN / UIN | 24BRBPM3275N1ZI | 24AABCT6866H1Z4 | |
| PAN No | BRBPM3275N | | |
| SAC Code | | | |
| HSN Code | | Place of Supply | Gujarat |
| STATE NAME | GUJARAT | | |
| STATE CODE | 24 | | |
| SR.NO. | PARTICULARS | | AMOUNT |
| A | Labour charges | | |
| A 1 | Basic | | 858490 |
| A 2 | Production Bonus | | 91534 |
| | Special Allownce | | 17950 |
| B | Intr. Bonus | | 71508 |
| C | Leave Encashment | | 41229 |
| | Festival Incentive / Att. Ince | | |
| | Atte. Incentive | | |
| D | Sub Total (A) | | 1080711 |
| | | | |
| | Basic+Pro Bonus+Sp All | | 967974 |
| E | Service Charges 10.00 % | | 96798 |
| F | Provident Fund ( 12% of basic + 1 % addition ) | | 111604 |
| G | ESI if Applicable ( 3.25% of Gross Salary ) | | |
| H | LWF | | |
| | Last month Arrear | | 208402 |
| | Sub Total (B) | | 1289113 |
| I | Net Total (A + B) | | 15785 |
| | Canteen | | 0 |
| | PMRPY _ Previous Month | | 1273328 |
| | Total Billing Amount | | 114600 |
| | CGST @ 9 % | | 114600 |
| | SGST @ 9 % | | 1502528 |
| | Net Billing Amount | | |

Rupees Fifteen Lakhs Two Thousand Five Hundred Twenty Eight Only

**Terms & Conditions :**

1. Subject it Kalol Jurisdiction.
2. Payment made by Payees A/C Cheque/ DD Payable at Kalol
3. Interst @ 24 % p.a. shall chaged on past due payments
4. Discrepancy in the Invoice if any should be informed to the contractor within 7 working days beyond which the full amount mentioned in the invoice becomes due for the payment
5. tax payable under RCM (Y/N) - No

CLEAN INDIA SERVICES

Authorised Siganatory

129, Jay Bhavani society, Nr. Water Tank, Railway East, Kalol, Dist Gandhinagar. (N.G.)
Mo. 9662444555, 9925288109, 7226883333 E-mail : dadafacility@yahoo.com

21.7 We have observed from the above mentioned bill that M/s Troika has paid gross amount for the moth to the labour contractor for supply of labours at factory premises.

The gross amount includes allowances, leave encashment and Provident Fund. This shows that M/s Troika paid gross amount to the labour contractor and labour contractor being employer paid the wages per month to the workers being employees and also deduct Provident Fund. M/s Troika has entered into agreement with Contractor to provide the worker i.e. Security Personal in lieu of some consideration. M/s Troika paid agreed amount to the contractor and contractor pays the salary/wages to the Security Personal. Therefore, it evident that the instant case does not pass the test of employer-employee relationship and is therefore does not fall under the ambit of entry I of Schedule III of CGST Act.

22. We find that the term, 'outward supply', has been defined in Section 2(83) of the CGST Act, 2017, as below:

> *"'Outward Supply' in relation to a taxable person, means supply of goods or services or both, whether by sale, transfer, barter, exchange, license, rental, lease or disposal or any other mode, made or agreed to be made by such person in the course or furtherance of business".*

23. The term "business" is defined in Section 2(17) of the CGST Act, which reads like this:

> "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 incidents or ancillary to sub-clause (*a*); ...

From the plane reading of the definition of "business", it can be safely concluded that the supply of food by the applicant to its contractual worker would definitely come under clause (*b*) of Section 2(17) as a transaction incidental or ancillary to the main business. As the contractual worker are working for the company to run the business activity of M/s Troikaa.

24. Schedule II to the CGST Act, 2017 describe the activities to be treated as supply of goods or supply of services. As per clause 6 of the Schedule, the following composite supply is declared as supply of service:

> *"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."*

25. Even though, there is no profit as claimed by the applicant on the supply of food to its contractual worker, there is a "supply", as provided in Section 7(1)(a) of the CGST Act, 2017. The applicant would definitely come under the definition of "Supplier", as provided in sub-section (105) of Section 2 of the CGST Act, 2017.

26. The term 'consideration' is defined in Section 2(31) of the CGST Act, 2017, which is extracted below:

*'consideration' in relation to the supply of goods or services or both includes,-*

*(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;*

*(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:*

**Provided** that a deposit given in respect of the supply of goods or services or-both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply.

Since the applicant recovers the cost of food from its contractual worker, there is 'consideration', as defined in Section 2(31) of the CGST Act, 2017.

27. To sum up, in the case at hand, the applicant has established canteen facilities as mandated under Section 46 of the Factories Act, 1948 and supplies food at a subsidized cost through third-party-vendor. The supply of food by the applicant is 'Supply of Service' by the applicant to their contractual worker/s. The cost, which is recovered from the salary of contractual worker, as deferred payment is 'consideration' for the supply and GST is liable to be paid.

28. In view of the above, we hold that recovery of amount from contractual worker on account of third party canteen services provided by M/s Troika would come under the definition of 'outward supply' as defined in Section 2(83) of the CGST Act, 2017 and therefore, liable to tax as a supply under GST.

29. We now detail our findings on admissibility of ITC of GST paid on canteen charges to the canteen service provider.

**ITC on canteen charges on the food supplied to employees of the applicant company:**

30. 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 insurance and health insurance:*

*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."*

30.1 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. The CBIC vide Circular No. 172/04/2022-GST dated 6-7-22 has issued clarification on the eligibility of such ITC is reproduced as under :

Issue:

Whether the proviso at the end of clause (b) of sub-section (5) of section17 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)?

Claification:

1.Vide the Central Goods and Service Tax (Amendment Act) 2018, clause(b) of sub-section (5) of section17of 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 section17 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.*

2. The said amendment in sub-section (5) of section 17 of the CGST Act was made based on the recommendations of GST Council in its 28th meeting. The intent of the said amendment in sub section (5) of section17, 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."*

3. Accordingly, it is clarified that the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17of the CGST Act is applicable to the whole of said clause (b) of sub-section(5) of section 17 of the CGST Act.

30.2 We find that in view of the above clarification ITC of the GST paid on canteen charges is available to the applicant on the food supplied to the employees of the applicant company as such under Section 46 of the Factories Act, it is mandatory to provide canteen facility to the employees.

ITC on canteen charges on the food supplied to contractual worker

31. We in the para 21.7 have already discuss that contractual worker do not cover under the category of employer-employee relationship. Further, the eligibility of ITC on food supplied to the contractual workers depends on the issue 'whether applicant company is mandate to provide food to contractual worker'. In this regard, we refer to the provision of Contract Labour (Regulation and Abolition) Act 1970( CLRA). Chapter V of CLRA is produced as under:

> Chapter V
>
> WELFARE AND HEALTH OF CONTRACT LABOUR
>
> 16. Canteens- (1) The appropriate Government may make rules requiring that in every establishment-
>
> (a) to which this Act applies,
>
> (b) wherein work requiring employment of contract labour is likely to continue for such period as may be prescribed, and
>
> (c ) wherein contract labour numbering one hundred or more is ordinary employed by a contractor, one or more canteens shall be provided and maintained by the contractor for the use of such contract labour.
>
> (2) Without prejudice to the generality of the foregoing power, such rules may provide for –
>
> (a) the date by which the canteens shall be provided,
>
> (b) the number of canteens that shall be provided, and the standards in respect of construction, accommodation, furniture and other equipment of the canteens; and
>
> ( c) the foodstuffs which may be served therein and the charges which may be made thereof.

31.1 The provision of Chapter V of CLRA stipulates that labour contractor shall provide the canteen facility to the labour employed by the contractor. Thus, there is no mandate to the applicant company to provide canteen facility to the contractual worker. We find that ITC on foods, beverages , outdoor category is not block provided it is *obligatory for an employer to provide the same to its employees under any law for the time being in force* under Section 17 (5). In the instant case the applicant company and contractual worker do not cover under the category of employer-employee relationship and also it is not obligatory on the applicant company to provide canteen facility to the Contractual worker as per the provisions of CLRA Act. Section 17(5) allows ITC on food, beverages and outdoor

catering only in case it is obligatory under any *law for the time being in force.* Thus applicant is not eligible of ITC on the food supplied by canteen service provider to contractual worker and is blocked under Section 17(5) (b) of CGST Act 2017.

31.2 Thus, we hold that applicant company is not eligible to the ITC on food supplied to the contractual worker under Section 17 (5) (b) of CGST Act 2017.

***RULING***

1. GST, at the hands of M/s Troikaa, is **not leviable** on the amount representing the **employees** portion of canteen charges, which is collected by M/s Troikaa and paid to the Canteen service provider.

2. GST, at the hands of M/s Troikaa, is **leviable** on the amount representing the **contractual worker** portion of canteen charges, which is collected by M/s Troikaa and paid to the Canteen service provider.

3. ITC on GST paid on canteen facility is admissible to M/s Troikaa 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 compny.

4. ITC on GST paid on canteen facility is not admissible to M/s Troikaa under Section 17 (5)(b) of CGST Act on the food supplied to contractual worker supplied by labour contractor.

**(ATUL MEHTA)**
**MEMBER (S)**

GUJARAT AUTHORITY FOR ADVANCE RULING GGST-CGST, AHMEDABAD

**(AMIT KUMAR MISHRA)**
**MEMBER (C)**

Place: Ahmedabad

Date: 10/08/2022

GUJARAT AUTHORITY FOR ADVANCE RULING GGST-CGST, AHMEDABAD