GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	

ADVANCE RULING (APPEAL) NO. GUJ/GAAAR/APPEAL/2025 /07
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2022/AR/09)

Date: 28.2.2025

Name and address of the appellant	:	M/s. Troikaa Pharmaceuticals Ltd., GF-1, Ground floor, Commercial House-1, Satya Marg, Boadakdev, Ahmedabad, Gujarat- 380 054.
GSTIN of the appellant	:	24AABCT6866H1Z4
Jurisdiction Office	:	Office of the Assistant Commissioner of State Tax, Unit-9, Range-3, Division-1, Ahmedabad.
Advance Ruling No. and Date	:	GUJ/GAAAR/R/2022/38 dated 10.08.2022
Date of appeal	:	30.09.2022
Date of Personal Hearing	:	21.1.2025
Present for the appellant	:	Shri Sandip Gupta, CA & Shri Arun Govlani, CA

At the outset we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 and Gujarat Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act, 2017' and the 'GGST Act, 2017') are *pari materia* 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, 2017 would also mean reference to the corresponding similar provisions in the GGST Act, 2017.

2. The present appeal is filed under Section 100 of the CGST Act, 2017 and the GGST Act, 2017 by M/s. Troikaa Pharmaceuticals Limited, (hereinafter referred to as 'appellant') against the Advance Ruling No. GUJ/GAAAR/ R/2022/38 dated 10.08.2022.

3. Briefly, the facts are enumerated below for ease of reference:

- the appellant is engaged in the manufacture, sale & distribution of pharma products and is registered with the department;

- the appellant has appointed a CSP[1];
- the appellant provides subsidized canteen facilities to its employees & contractual workers;
- the appellant recovers 50% of the amount from the employees;
- that as far as security service contract workers is concerned, the canteen service provider raises bill for only 50% of the amount as the rest of the amount is being directly paid by the individual workers to the service provider.

4. In view of the foregoing facts, the appellant had sought Advance Ruling on the following questions, *viz*:

> *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?*

5. Consequent to hearing the applicant, the Gujarat Authority for Advance Ruling [GAAR], recorded the following findings *viz*

- that in terms of the circular No. 172/4/2022-GST dated 6.7.2022, the benefit provided by employer to its employees in terms of contractual agreement is not supply;
- that in terms of section 17(5)(b), ITC is available on GST paid where it is obligatory to provide a benefit by an employer to an employee; that the said sub-section read with the clarification issued vide circular No. 172/4/2022-GST dated 6.7.2022, ITC of the GST paid on canteen charges is available to the applicant on the goods supplied to the employees of the applicant as it is mandatory to provide canteen facility u/s 46 of the Factories Act, 1948;
- that as far as providing canteen facility to contractual workers are concerned, it was held as under:
    - the contractual workers do not form part of the employee as they are not on the pay roll of the appellant;
    - that the term 'employed' is not defined under GST & hence in terms of the dictionary meaning, it means engaged or occupied in the performance of the work or hired to perform labour;
    - that relying on the test of establishing employer-employee relationship as spelt out in the case of Balwant Rai Saluja, by the Hon'ble SC, the appellant has entered into a contract with the contractor; that the amount towards salary/wages is paid to the contractor; that the instant case does not pass the test of employee-employee relationship & hence not covered under the ambit of entry 1, Schedule III of the CGST Act, 2017.
    - that even though there is no profit, as claimed by the appellant on the supply of food to contractual workers, there is supply in terms of section 7(1)(a), *ibid*;
    - since the appellant recovers the cost of food from its contractual workers there is consideration as defined u/s 2(31), *ibid*;
- that as far as availment of ITC on canteen charges on the food supplied to contractual workers is concerned, the ruling held that:
    - the contractual workers are not covered under the employee-employer relationship;

[1] Canteen Service Provider

- that in terms of provision of chapter V of CLRA[2], 1970, the labour contractor shall provide the canteen facility to the labour employed by the contractor;
- that there is no mandate that the appellant is required to provide canteen facility to the contractual worker;
- that since providing canteen facility to contractual workers is not obligatory, ITC is blocked in terms of section 17(5) of the CGST Act, 2017.

6. The GAAR, vide the impugned ruling dated 10.08.2022, held as follows:

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.

7. Being aggrieved by the impugned ruling i.e. denial of ITC on canteen services provided by the appellant to contractual workers and levy of GST on food charges recovered from contractual workers, the appellant is before us, raising the following contentions, *viz*

- the GAAR did not give the appellant an opportunity of being heard and hence there is violation of natural justice;
- that in terms of clarification at issue no. 3 vide circular dated 6.7.2022 & Schedule-III of the CGST Act, 2017, the appellant is eligible for ITC on canteen services as it is under legal obligation; that no GST amount is leviable on the amount recovered from contractual workers for canteen services, respectively;
- that while relying on section 16 of the CLRA, 1970, the authority ignored sections 20, 21 & 29, *ibid*;
- that the appellant is the principal employer of the contractual employees in terms of section 2(g); that in terms of the CLRA, 1970, if the contractor does not provide the canteen facility it is to be provided by the applicant being a principal employer;
- that in terms of section 2(l) of the Factories Act, 1948, a worker includes a contractual worker;
- that the authority ignored paragraph 30(3) of the EPF Scheme wherein the main and primary responsibility for depositing provident fund is with the appellant & therefore there is an employer-employee relationship;
- that in terms of the term 'employed' as defined in the impugned ruling, it includes employees hired to perform labour;

[2] Contract Labour (Regulation & Abolition) Act, 1970

- that the contractual workers are huge in numbers & all of them are working in the factory premises of the appellant which is possible when they are working under the complete control and supervision of the appellant;
- that though there is no formal employer-employee relationship, the appellant as principal employer will still be responsible for all workers directly or indirectly employed by the appellant.

8. Personal hearing in the matter was held on 21.1.2025, wherein Shri Sandip Gupta, CA & Shri Arun Govlani, CA appeared on behalf of the appellant and reiterated the grounds of appeal.

9. The appellant thereafter vide additional submission through email dated 29.1.2025, addressed to Registry, stated as follows:

With reference to our hearing held on 21-01-2025, we are attaching herewith following:

1. Our contract with a contractor named PSM Enterprise wherein para 18 clearly mentions that if the contractor does not comply with statutory regulation, the company will have to undertake the same.
2. Our contract with a contractor named Tirupati Enterprise wherein para 17 clearly mentions that if the contractor does not comply with statutory regulation, the company will have to undertake the same.
3. Our contract with a contractor named Samrat Dua wherein para 20 clearly mentions that if the contractor does not comply with statutory regulation, the company will have to undertake the same.

Hence, in view of the above, we again would like to reiterate and draw your kind attention towards following:

- Troikaa is under legal obligation to provide canteen facilities even to its contractual employees through these contracts read with relevant provisions of Contract Labour (Regulation and Abolition) Act 1970 (CLRA) along with Factories Act, 1948. The said relevant provisions are already mentioned in our submission.
- Employees has not been defined anywhere in GST however GST circular 172/04/2022 at issue 3 clearly mentions that 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.

  Now while referring to any law for the time being in force, employees should also be considered as referred to in that law. Now, the relevant provisions of Contract Labour (Regulation and Abolition) Act 1970 (CLRA) along with Factories Act, 1948 clearly mentions the obligation towards all employees / workers, whether regular or contractual. Hence, there is absolute employer - employee relationship making Troikaa under obligation to provide canteen facilities to all of its employees including contractual employees.

- We are attaching the relevant provisions of CLRA Act and Factories act which have already been included in our submission.
- We have already mentioned our detailed arguments in our submission.

The relevant extracts of the contract entered into with M/s. Tirupati Enterprises, are reproduced below for ease of reference *viz*

CONTRACT AGREEMENT FOR LABOUR SUPPLY

AN ARTICLE OF AGREEMENT MADE ON THIS **21st June 2024** between **M/s Troikaa Pharmaceuticals Ltd.**, in corporation under the company ACT 1950 having its register office at Commerce House 1, Satyamarg Bodakdev, Ahmedabad - 380054 (Which expression shall include that heirs executors and assigns), herein after referred to as the 'Company' on one part and **M/S Tirupati Enterprises** having their office at Lane No.-8, Post Office Road, Clement Town, Dehradun. (Which expression shall include their heirs executors and assigns), herein after referred to as the 'Contractor" on the other part.

13. The contractor must comply with all the applicable industrial laws such as Factories act, Employees Provident Fund and Misc. Provisions act, ESIC Act, Minimum Wages Act, Payment of Wages Act, Bonus Act, Gratuity Act, The contract labour (Regulation and abolition) Act 1970 etc, and shall submit all the forms and returns in time and also maintain records and registers required as per the act. The Contractor shall produce the records to the company executive as and when demanded. The contractor will be responsible for all the consequences including penalties if any for non compliance with respect to the applicable labour laws. Any deviation in statutory compliance will lead to penalty as per **Annexure B (No Annexure B is attached).**

14. The contractor shall also comply with all other labour and industrial laws and such other Acts and status as may be applicable to the contractor from time to time and maintain the necessary documents/records and submit to concern Authorities.

16. The contractor shall make all the statutory deductions from the salary/wages payable to the workers towards ESIC, PF, Labour Welfare Fund and professional tax etc as may be applicable from time to time and submit a copy of the certificate / proof that all the statutory dues including ESIC and PF has been paid by him in time. Statement of such deductions and payments made shall be submitted along with the contractor's monthly bill.

17. The company will not in any way be responsible for non-compliance of any labour laws, applicable to the contract employees. If the company is required to make any payments under any statutory regulations on behalf of the contractor / due to non compliance or failure of the contractor, the company shall deduct the same from the amount payable to the contractor, during the period of contract or thereafter.

19. Be it clearly understood and agreed that by this deed, no relationship of the employer and employee is created between the company and the workers engaged by the contractor.

10. We have carefully gone through and considered the appeal papers, written submissions filed by the appellant, submissions made at the time of personal hearing, the impugned ruling, additional submissions made post hearing and other materials available on record.

11. Before dwelling on to the issue, we would like to reproduce relevant portions of GST Act and circular/clarification for ease of reference *viz*

- **CENTRAL GOODS AND SERVICES TAX ACT, 2017**

Section 17. Apportionment of credit and blocked credits.-

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

(b) [3][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.]*

➢ Circular No. 172/04/2022-GST dated 6.7.2022

Clarification on various issues of section 17(5) of the CGST Act		
3.	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)?	1. Vide the Central Goods and Service Tax (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." 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 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." 3. 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.
Perquisites provided by employer to the employees as per contractual agreement		
5.	Whether various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST?	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 there from 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.

12. On going through the prayer, we find that the appellant is aggrieved against the impugned ruling dated 10.08.2022, only to the extent that:

[a] it holds that GST at the hands of the appellant is leviable on the amount representing contractual worker portion of canteen charges which is collected by the appellant & paid to CSP; and

[b] it holds ITC on canteen facility is not admissible under section 17(5)(b) of the CGST Act, 2017, on the food supplied to contractual workers.

13. The primary averment raised by the appellant is that while relying on section 16 of the CLRA, 1970, GAAR ignored sections 20, 21 & 29, *ibid* ; that in terms of section 2(g), the appellant is the principal employer of the contractual employees and under CLRA if the contractor **does not provide** the canteen facility it is to be provided by the appellant; that in terms of section 2(l) of the Factories Act, 1948, worker includes a contractual worker. The other averments have already been listed in paragraph 7 and is not being repeated for the sake of brevity.

14. Section 20 & 21 of CLRA, 1970, is reproduced below for ease of reference *viz*

20. Liability of principal employer in certain cases
(1) If any amenity required to be provided under Section 16, Section 17, Section 18 or Section 19 for the benefit of the contract labour employed in an establishment is not provided by the contractor within the time prescribed therefor, such amenity shall be provided by the principal employer within such time as may be prescribed.

(2) All expenses incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

21. Responsibility for payment of wages.-
(1) A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.

(2) Every principal employer shall nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such

manner as may be prescribed.

(3) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorised representative of the principal employer.

(4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor any contract as a debt payable by the contractor.

Relying on sections 20(2) and 21(2), it is averred that though statutorily it is the contractor who is required to provide the amenity to the contractual workers in terms of section 16, *ibid*, the onus shifts on the principal employer *ie* the appellant in case the contractor is not providing the same. Two things are therefore clear [a] that statutorily it is the contractor on whom the CLRA Act has entrusted the task of providing the amenity; and [b] the responsibility shifts on the principal employer *ie* appellant in case of the contractor is not providing the same. However, one cannot ignore the fact that the section also states that all expenses incurred by the principal employer in providing such amenity may be recovered from the contractor either by deduction from any amount payable under any contract or as a debt payable by the contractor.

15. The GAAR in its impugned ruling, vide paragraphs 21 to 21.7 and thereafter in paragraphs 22 to 29 and 31, has provided its reasoning, which has not been rebutted by the appellant. The appellant in his averments assumes of a situation wherein he is thrusted with the responsibility as a primary employer, which would arise only in case the contractor fails in his statutory obligation. The assumption so made is not supported by factual evidence. Further, the copy of the invoice reproduced at paragraph 21.6 of the impugned ruling, the facts belie these averments and assumptions. It clearly depicts that the contractor has been paid the gross amount which includes salary, allowances such as canteen facility, provident fund, etc. We are also unable to pinpoint any averment by the appellant that the contractor has failed to fulfill his statutory obligation, the primary requirement for the onus to shift to the appellant.

16. Further, in the agreement with M/s. Tirupati Enterprises, Dehradun, the relevant extracts of which are reproduced supra, in clause 19

explicitly states that no relationship of employer-employee is created between the appellant and the workers engaged by the contractor. This being so, the clarification at serial no. 5, vide circular no. 172/4/2022-GST dated 6.7.2022 relied upon by the appellant to aver that no GST amount is leviable on the amount recovered from contractual workers for canteen services, fails since the clarification states that perquisites provided by the **employer to its employees** in terms of contractual agreement entered into between them will not be subject to GST. Further, the clarification at serial no. 3 of the said circular dated 6.7.2022, regarding availment of ITC, would also not be applicable since it is available only in respect of the goods supplied to the employees of the appellant in terms of section 46 of the Factories Act, 1948, which mandates provision of canteen facilities to the employees. Further, in terms of clause 17 of the agreement, appellant also indemnifies himself for any payment made on behalf of the contractor.

17. The GAAR has dealt with the issue in depth in the paragraphs mentioned above. Nothing new is produced before us forcing us to interfere with the impugned ruling.

18. We therefore, uphold the impugned ruling dated 10.8.2022.

19. In view of the foregoing, we reject the appeal filed by appellant M/s. Troikaa Pharmaceuticals Ltd, against the Advance Ruling No. GUJ/GAAR/R/2022/38 dated 10.08.2022, passed by the Gujarat Authority for Advance Ruling.

(Rajeev Topno)
Member (SGST)

(B V Siva Naga Kumari)
Member (CGST)

Place: Ahmedabad
Date: 24.02.2025