

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



**ADVANCE RULING NO. GUJ/GAAR/R/2025/49
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2025/AR/18)**

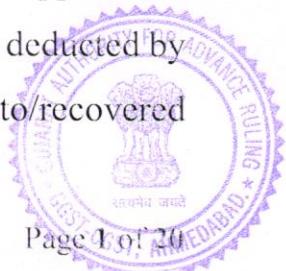
Date: 19/11/2025

Name and address of the applicant	:	M/s. Zydus Hospira Oncology Private Limited. Plot No. 3, Pharmez-Special Economic Zone, Sarkhej-Bawla Highway, N.H.No. 8A, Matoda, Sanand, Ahmedabad, Gujarat- 382213.
GSTIN of the applicant	:	24AACZ2327A1ZX
Jurisdiction Office	:	Center Commissionerate- Ahmedabad North Division – IV, Changodar Range –V
Date of application	:	08.05.2025
Clause(s) of Section 97(2) of CGST/GGST Act, 2017, under which the question(s) raised.	:	(c), (e)
Date of Personal Hearing	:	16.10.2025
Present for the applicant	:	Shri Hiren Pathak, Authorised Signatory

Brief facts:

M/s. Zydus Hospira Oncology Private Limited, Plot No. 3, Pharmez-Special Economic Zone, Sarkhej-Bawla Highway, N.H.No. 8A, Matoda, Sanand, Ahmedabad, Gujarat-382213 [for short – ‘applicant’] is registered under GST and their GSTIN is 24AACZ2327A1ZX.

2. The applicant has stated that they are a pharmaceutical company and is dealing in various Oncology products. They have a factory in Pharma Special Economic Zone, wherein manufacturing of the aforesaid goods and other functions like finance, human resources, taxation, information technology, etc are carried out.
3. The applicant provides canteen facilities to employees and contractual workers for which the applicant has contracted with caterers (hereinafter referred to as the Canteen Service Provider-CSP) to operate canteen within the Applicant’s premises and a specified percentage of the cost of the meals provided is deducted by the applicant from their employees’ salaries and from the amount paid to/recovered from contractor providing contractual workers on a monthly basis.



4. The applicant has sought a ruling on the following questions: -

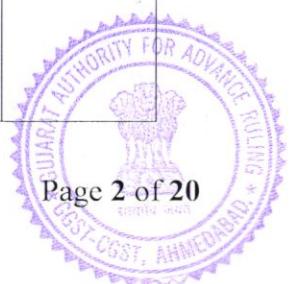
(1) *Whether subsidized deduction made by the applicant from the employees and workers towards canteen facility provided by the canteen service provider at the canteen facility would be considered as a 'supply' by the applicant under the provisions of Section 7 of the CGST Act, 2017 and GGST Act, 2017.*

(2) *In case answer to above is yes,*

- *Whether GST is payable on the amount recovered as deduction from the salaries of employees to worker contractors or an open market value?*

5. The applicant has explained the nature of recovery of subsidized value as under: -

Sl. No.	Type	Mode of availing facility	Basis of recovery	Mode of recovery	Book Treatment	Payment of GST on outward supply
1	Full-time employees	ID card	On the basis of consumption	Subsidized value deducted from salary on actual consumption and disclosed under the deduction side of the salary pay slip	Deduction is credited to the canteen expense account while the full amount of the invoice issued by the canteen service providers is booked as expense in the applicant's Profit and loss account	GST is paid on open market value (i.e. the value charged by the canteen service provider)
2.	Contractual employees	ID card/coupon	On the basis of consumption	Subsidized value deducted from payment to contractor on actual consumption or coupons are given to work contractors at subsidized value	Deduction is credited to the canteen expense account while the full amount of the invoice issued by the canteen service provider is booked as expense in the applicant's Profit and loss account	GST is paid on open market value (i.e. the value charged by the canteen service provider)



					Profit and loss account	
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Each employee and worker have been issued an ID card while joining the company which can also be used to avail the canteen facility. The contractual labour not having access to canteen via ID card are issued a coupon, which can be used to avail canteen facility. The employees and workers are charged only for the days on which they have consumed meal and an amount of pre-determined percentage shall be deducted from the salary payable to the respective employee or amount payable to the contractor towards meal facilities taken by workers. For the workers who do not have ID card, are given a coupon at subsidised rate. The applicant being an SEZ unit, the canteen service provider does not charge GST, considering the same as zero-rated supply to SEZ unit for authorised operations.

6. As per Section 46 of the Factories Act, 1948, in any specified factory wherein more than 250 workers are ordinarily employed, a canteen shall be the provided and maintained by the 'Occupier' for the use of the workers. As per Section 2(n) of the Factories Act, 1948, the person who has ultimate control over the affairs of the factory is the 'Occupier'. Since the applicant has ultimate control over the affairs of the factory, they will be treated as the occupier and therefore, is mandated to provide and maintain a canteen for the use of its employees.

7. Further, as per Section 2(l) of the Factories Act, 1948, '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.

8. The term employee has not been defined under GST. Therefore, a reference is drawn from the Employee Fund & Miscellaneous Provisions Act, 1952 (EPF Act). Section 2(f) of EPF Act defines employee as any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets his wages directly or indirectly from the employer, and includes any person—



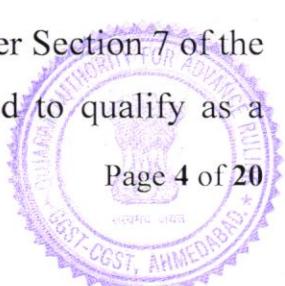
- (i) employed **by or through a contractor** in or in connection with the work of the establishment;
- (ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the standing orders of the establishment;

On perusal of the above meaning of employee, the definition of employee under the EPF Act covers the persons appointed through contractor as well. The essential test considered to determine the relationship are (i) control of the employer and supervision (ii) servicing rules of the company bind on them (iii) bar from other work (iv) relationship of master and servant etc.

9. In the case of the applicant, the contractual workers provided are under the full control and supervision of the applicant though appointed from third party contractor. The work performed by the workers are essential and a usual course of main business of the applicant. The workers are bound by the work policy of the applicant. Therefore, the applicant considers workers hired through contractor should be considered at par with employees.

10. The applicant is mandated to provide canteen facilities to its employees and workers at the factory as per the Factory Act and the factory premises is located far away from local city limits and considering the time and effort required for arranging the food on daily basis, the applicant had decided to provide canteen facility to its employees and workers at the factory by appointing a canteen service provider (CSP). While the food is provided by the CSP to all the employees and workers at the canteen facility and considering that it is practically inconvenient to enter into a contractual agreement with every employee and worker, the CSP has entered into an agreement with the applicant. It is agreed that the applicant shall contract and pay in full to the service provider for the food during a prescribed period on behalf of the employees and workers and a pre-determined percentage of the amount paid by the applicant is recovered from the employees and workers (without any profit) and the balance amount borne by the applicant, is being treated as staff welfare expense towards subsidized food served to employees and workers.

11. The recovery of the amount from the employees and workers cannot be subjected to GST as the same cannot be considered as supply as per Section 7 of the CGST Act. To levy tax on any activity, the activity is required to qualify as a



‘Supply’ in the first place. The term ‘supply’ includes all forms of supply and includes agreeing to supply when the supply is for consideration and is in the course or furtherance of business. The following criteria play a crucial role to determine the GST implication on provision of such a facility: -

- There shall be a legal intention of both the parties to the contract to supply and receive the goods or services or both. The absence of such intention would not amount to supply within the meaning of CGST Act.
- It should be quid pro-quo viz., the supply transaction requires something in return, which the person supplying will obtain, which may be monetary terms/ in any other form except in cases of deeming provisions as specified in Schedule I, and
- The supply shall be effected by a person in the course or furtherance of business.

12. The provisions of canteen facility to the employees and workers is due to mandatory statutory obligation and to save time and efforts of approx. 560 number of employees and workers at the premises. The applicant is merely providing demarcated space for canteen facility as mandated under the provisions of the Factories Act to its employees and its workers. The supply is from the canteen Service provider to the employees and workers and not from the Canteen Service Providers to the applicant as the food gets consumed only by the employees and workers. Though the supplier is the canteen service provider and the invoice is raised on the applicant, the ultimate recipient of such canteen facility is the employee and workers.

13. The applicant has relied upon the judgement of Gujarat AAAR in the matter of *Amneal Pharmaceuticals Pvt Ltd.* {TS-369-AAAR(Guj)-2021-GST} wherein it was ruled that no GST is to be levied on the third-party canteen charges collected by employer from employee. The applicant has also relied upon the judgment of this Authority in the case of *Zydus Lifesciences Ltd* (Advance Ruling No. GUJ/GAAR/R/2022/42) as well as *Zentiva Private Ltd* [2024 (6) TMI 224] which has held that GST at the hands of the applicant is not leviable on the amount representing the employees portion of canteen charges, which is collected by the applicant and paid to the CSP. The applicant has also relied upon the judgement in the case of *R.J.Tolsama Vs Inspecteur der Omzetbelasting Leeuwarden*, where it

was held that the supply of service effected for consideration within the meaning of that provision does not include an activity consisting in playing music on the public highway for which no remuneration is stipulated, even if musician solicits money and receives sum whose amount is however neither quantified nor quantifiable. Thus, there must be a legal intention to enter in a contractual relationship with its recipient, which casts roles and responsibility on each of the contractual party in order to fall under the ambit of supply.

14. The applicant submits that there is no supply by him in the form of the provision of canteen facility to its employees and workers. The applicant further submits that a supply must involve enforceable reciprocal obligations. If something has been used, but there was no agreement for its supply between the relevant parties, any payment subsequently received by the aggrieved party is not consideration for supply. Further, there is no reciprocity of any activity or transaction i.e. quid-pro-quo.

15. The applicant also submits that the supply should be effected in the course of furtherance of business under the CGST Act. It is evidently clear from the definition of business that the activity under evaluation does not fall within the definition of business. As per Sr. No. (a) of Section 2(17) of the CGST Act, 'business' includes any trade, commerce, manufacture, profession, vocation, adventure and wager or any other similar activity. The applicant has reproduced the definitions of trade, commerce, manufacture, profession, vocation, adventure and wager from Black's law dictionary and submitted that the activity of providing canteen service does not fall under any of these terms. Reliance has also been placed on the case of *Cinemax India Ltd. Vs UOI* wherein the term 'furtherance of business' has been mentioned as an act of furthering, helping forward business, promotion of business, advancement of business or progress of business. Further, reliance was also placed on the Allahabad High Court judgement of *Indian Institute of Technology Vs State of Uttar Pradesh* to submit that canteen facility cannot be treated as an ancillary to the business activity.

16. The applicant further submits that as per Schedule-III of the CGST Act, service by an employee to the employer in the course of or in relation to his employment shall be treated as neither supply of goods nor supply of service. Further, CBIC Circular No. 172/04/2022-GST dtd. 06.07.2022 also provides that

any perquisite provided by the employer to its employee in terms of contractual agreement entered into between them are in lieu of the services provided by the employee to the employer in relation to its employment. The canteen facility at the factory is being undertaken on account of the legal obligation casted upon the applicant for its employees only, and hence must be considered as a part of employment arrangement. The applicant has also relied upon the following rulings of the Advance authorities to submit that in view of the provisions of Schedule-III of the CGST Act, GST was not applicable on the nominal amounts recovered by the applicant.

- *Tata Motors Ltd-GST ARA-23/2019-20/B-46 dtd. 25.08.2020*
- *Tata Power Company Limited -No. GST-ARA=99/2019-20/B-92*
- *Posco India Pune Processing Centre (P) Ltd, - GST-ARA-36/2018-19/B-110 dtd. 07.09.2018*
- *RE: Jotun India Pvt Ltd [2019(10) TMI 482.]*

17. Personal hearing was granted on 19.08.2025 wherein Shri Hiren Pathak, authorised representative appeared on behalf of the applicant and reiterated the facts & grounds as stated in the application. He also relied upon the judgement of Supreme Court in the case of *MMR Khan Vs UOI*-1990 AIR 937 to submit that the workers are to be considered as employees of the firm. An additional submission dtd. 29.10.2025 was also emailed by the applicant, wherein, they have submitted that as per the judgement of the Supreme Court in the case of *MMR Khan*, contractual workers engaged through third party agencies, but working under the control and supervision of the principal employer, are to be treated as employees for all statutory and legal purposes, including compliance with welfare legislations such as the Factories Act. Further, the contractual workers operate under the direct supervision, control and within the premises of the Applicant and their work is integral to the Applicant's manufacturing operations. The applicant was requested to submit a copy of the agreement entered into between them and the contractor who has supplied the contractual workers. The Applicant vide email dtd. 04.11.2025 submitted a copy of the agreement dtd. 10.06.2015, renewed upto 31.05.2026, entered into by them with M/s Disha Enterprise.



Discussion and findings

18. At the outset, we would like to state that the provisions of both the CGST Act and the GGST 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 provisions under the GGST Act.

19. We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made both oral and written during the course of personal hearing. We have also considered the issue involved, the relevant facts & the applicant's submission/interpretation of law in respect of question on which the advance ruling is sought.

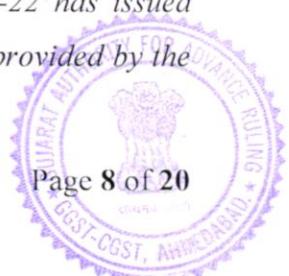
20. We find that we are faced with two issues: -

(i) whether the subsidized deduction made by the applicant from the employees, towards canteen facility provided by the canteen service provider at the canteen facility, would be considered as a 'supply' by the applicant under the provisions of Section 7 of the CGST Act, 2017 and GGST Act, 2017.

(ii) whether the subsidized deduction made by the applicant from the contractual workers, towards canteen facility provided by the canteen service provider at the canteen facility, would be considered as a 'supply' by the applicant under the provisions of Section 7 of the CGST Act, 2017 and GGST Act, 2017.

21. We find that both the issues have already been decided by this Authority in the case of *Re: Troikaa Pharmaceuticals Ltd* [(2023) 2 Centax 111 (AAR-GST-Guj)] and has been affirmed by the Appellate Authority for Advance Ruling as well. This Authority had held that GST is not leviable on the amount representing the employees' portion of canteen charges, which is collected by M/s Troikaa Pharmaceuticals Ltd and paid to the Canteen Service Provider in view of Board's Circular No. 172/04/2022-GST dtd. 06.07.2022. The relevant para of the ruling is reproduced below: -

"17.2 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

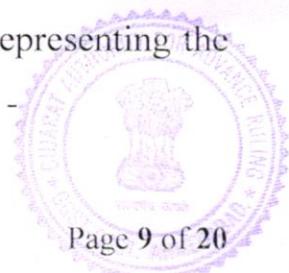
1. *Schedule III to the CGST Act provides that "services by employee to the employer in the course of or in relation to his employment" will not be considered as supply of goods or services and hence GST is not applicable on services rendered by employee to employer provided they are in the course of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

17.3 *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. "*

22. However, GST is leviable on the amount representing the contractual worker portion of canteen charges, which is collected by M/s Troikaa Pharmaceuticals Ltd. and paid to the Canteen Service provider. Since, the facts in the applicant's case as well as that in the case of M/s Troikaa Pharmaceuticals Ltd. are identical, we would follow our ruling given in M/s Troikaa Pharmaceuticals Ltd. to the applicant's case as well. A feeble attempt has been made by the applicant to distinguish the ruling given in Troikaa Pharmaceuticals Ltd., on the applicability of GST on the amount representing the contractual worker portion of canteen charges, based on the facts of the case. However, having gone through the agreement made by the applicant with the service provider, who supplies the contractual workers, we do not find any significant difference in the term of the agreement with that of the agreement entered into by Troikaa Pharmaceuticals Ltd. with their service provider, which we will discuss in the subsequent paras.

23. The relevant paras of the ruling given in the case of M/s Troikaa Pharmaceuticals Ltd., on the applicability of GST on the amount representing the contractual worker portion of canteen charges, is reproduced below: -



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

18. *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. These contractual workers do not form part of the 'employee' as they are not on the payroll 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.*

18.1 *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 payroll 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.]*

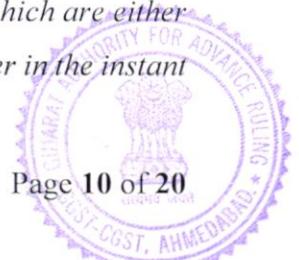
(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

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

18.2 *The term 'worker' is defined under section 2(1) 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];

18.3 *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(1) to be read with Section 46 of the Factories Act, 1948.

18.4 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. These contractual workers are supplied by the contractor to M/s Troika for carrying out activity in the premises.

18.5 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 v. Air India Ltd.* [2014] 9 SCC 407 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.

18.6 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:

* * *

18.7 We have observed from the above mentioned bill that M/s Troikaa has paid gross amount for the month to the labour contractor for supply of laborers at factory premises. The gross amount includes allowances, leave encashment and Provident Fund. This shows that M/s Troikaa 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 Troikaa has entered into agreement with Contractor to provide the worker i.e. Security Personal in lieu of some consideration. M/s Troikaa paid agreed amount to the contractor and contractor pays the salary/wages to the Security Personnel. Therefore, it is 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.

19. 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".

20. 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 plain 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.

21. 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."

22. 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 provide in sub-section (105) of section 2 of the CGST Act, 2017.

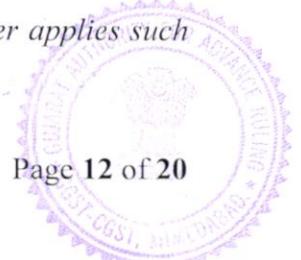
23. The term 'consideration' is defined in section 2(31) of the CGST Act, 2017, which is extracted below:

'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.

24. 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.

25. 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 Troikaa 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."

24. The authority in the case of *M/s Troikaa Pharmaceuticals Ltd.*, held that there wasn't employer - employee relationship reason behind that was allowance, leave encashment and provident fund was not paid by M/s Troikaa to contractual worker directly rather it was paid by the contractor. Here in the present case, we find that as per para. 3(b) as well as Schedule- II of the agreement, the gross bill raised by the contractor covers the Wages, ESI, PF, Bonus, Leave Salary as well as the service charge of the contractor. This service charge of the contractor is 9% of the Bill amount. Therefore, there is no difference in the manner of billing in the case of M/s Troikaa Pharmaceuticals Ltd. vis-à-vis the applicant. We find that the other terms of the agreement also do not convey any impression that there exists an employee-employer relationship between the applicant and the contractual workers. The relevant paras of the agreement, which we feel conveys the relationship between the applicant and the contractual worker, is highlighted and reproduced below:

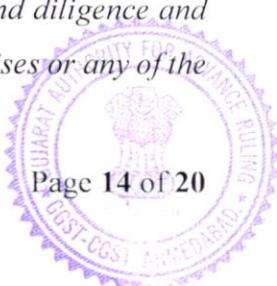
A) CONTRACT PERSONNEL-SELECTION & OPERATION

a) Selection of Contract personnel will be made subject to approval of the Company. The Contractor shall submit a list of contract personnel giving the details of their names, present and permanent address, domicile, date of birth, age, qualification along with their testimonials showing their address proof, birth proof, etc. within one week from the date of commencement of this contract and the Contractor also agrees to update the same regularly for any change in personnel. The Contractor agrees that it shall not engage any personnel having criminal background or adverse police record.

b) The Company will deal with Contractor only and will give instructions to him Only and not the personnel employed by the Contractor. The Company has no concern and will have nothing to do with the conditions of employment of the workers, working for the Contractor.



- i) *The Company will not have, whether directly or indirectly, any control, supervision or the manner of the discharge, dismissal or retrenchment or reemployment of the workers engaged / employed by the Contractor.*
- j) *The manpower provided by the Contractor will not be considered as employees of the Company and they will be solely employees of the Contractor and will not be entitled to any benefits enjoyed by the employees of the Company.*
- k) *The Contractor shall issue identity cards of its firm to all personnel, supervisor or agents who shall be entering and staying on in the said premises of the Company and ensure that all its personnel, supervisor or agent carry identity card while in the premises of the Company. The Company shall allow entry of only those personnel, supervisor or agent of the Contractor who are carrying the said identity cards.*
- l) *Company shall at its cost arrange to provide the uniform of such color, design, and pattern as may be decided by the management of the Company. The contract personnel shall come to attend duties only in uniform provided by the Company. They shall be neat and tidy and should be able to perform their duties to the satisfaction to the authority of the Company.*
- m) *The age of contract personnel shall be more than 18 years and less than 45 years with education of minimum X pass and above, can read and write English and Gujarati and shall have minimum experience as stipulated by the Company.*
- n) *The Contractor or his workers will be allowed to work at the premises of the Company only for the discharge of their obligations hereunder and will have no right of unrestricted entry to any area other than defined and designated area allocated to them for the work and are to remain upon the premise of such designated area and will have to vacate the premises after completion of working hours or at any time at the instance of the Company.*
- o) *The Company will not, in any manner be responsible for any acts, omission or commission of the workers engaged by the Contractor and no direct or indirect claim in this respect shall lie against the Company. However, in the event of any such claim being made against the Company by any of the Contractor's worker or his heirs, successors or assignees which the Company is required or obliged to discharge, the Contractor hereby indemnify and keep the Company indemnified against all the expenses, loss, cost incurred to be incurred by the Company in that regard.*
- p) *The Contractors appointment herein is non-exclusive and nothing in this Agreement shall be construed as to prevent the Company from entering into similar agreements with other party(ies) at its sole discretion and choice.*
- q) *The Contractors agrees to ensure that all manpower employed or provided by him shall at all-time obey the instructions and orders given by the authority of the Company and follow all the disciplinary rules, regulations, measures of the Company.*
- r) *No Contract personnel will be withdrawn or replaced without obtaining prior permission of the authorities of the Company and the position / work rotation of the contract personnel will be done only upon prior consultation with authorities of the Company.*
- s) *The Contractor shall render the services with all due care, discipline and diligence and shall not in any way impair the fixtures, fittings and other items in the premises or any of the properties of the Company.*



6. CONTRACTOR'S OBLIGATION

- a) If the Contractor fails to carry out the terms of the contract as required by the Company, Company shall be free to get the work done through another Contractor and the Contractor shall be liable to make good the loss and cost suffered and likely to be suffered by the Company.
- b) The Company will not be responsible in any manner for the staff provided by the Contractor. For the purpose of this Agreement / Contract, the Contractor will be deemed to be an independent agency and in case, the Company is required to meet any liability in respect of the staff provided by the Contractor, the Contractor shall indemnify and keep the Company indemnified against any such liability, loss or damages. In case any of the staff of the Contractor suffer any injuries in the course of employment, the Contractor alone shall be liable to pay compensation thereof.
- c) The Contractor will maintain a register of the staff as may be prescribed by the Company. This should contain full details of deployment and incidents recorded during the day. This should be available to the Company or its officer's daily for inspection and check. All the staff provided by the Contractor will work in close co-ordination and liaison. In case of any incident involving loss or damage to the property of the Company the same shall forthwith be reported to Management.
- d) The Contractor will make good to the Company, any damage, loss, fine penalty, payment, expenses including expenses for legal proceedings incurred or made by Company on account of the Contractor's failure or lapses in compliance with the above-mentioned laws or for any other reasons and the Company shall be entitled to deduct such amount payable to the Contractor.
- e) The Contractor will be responsible for any criminal act committed by its personnel deputed to the Company and the Contractor shall be responsible for expenses and contesting any criminal proceeding instituted against personnel of the Contractor.
- f) In case of any accident occurring during the performance of the services causing injury and/or any partial or permanent disablement to any personnel engaged for performance of services by the Contractor, it shall be the responsibilities of the Contractor to bear and make good all medical expenses and compensation in respect of the same.

7. COMPLIANCE WITH LEGISLATION

- a) The Contractor will be liable for due observation and implementation of all the statutory obligations under labour legislation and other enactments, whatsoever as applicable to the Contractor and the workmen employed by him.
- b) The Contractor will get himself registered under Contract Labour (Abolition and Regulation Act) 1970 or any other legislation as is applicable and has to receive the License and Registration No. and will get the same amended as and when required. The Contractor shall carry out all obligations arising under the provisions of the Contract Labour (Regulation and Abolition) Act 1970 and report to the Company the compliance from time to time as required by the Company.

c) The Contractor shall be liable to pay wages, bonus, P.F., ESI and carry out other statutory liabilities in respect of contract labour engaged by the Contractor. This payment shall be affected in the presence of employer's representative and shall submit copy of documents in support thereof to the designated officer of the Company.

d) The Contractor will provide for their own staff and will be liable to pay salary, wages and emoluments (As per minimum wages Act), Provident Fund, ESIC contributions and other dues in respect of their staff.

e) The Contractor will comply with all the rules, regulation and provisions of the following Acts and Rules made there under and shall obtain necessary License, registration and file documents and return as required and the Contractor will also extend benefits if applicable, under the below mentioned Labour legislation Act to their personnel working in the presence of the agreement.

The Acts referred above are:

- Payment of Wages Act
- Minimum wages Act
- Employees Provident Funds Act - 1952
- Employees State Insurance Act - 1948
- Workmen's Compensation Act - 1923
- Contract Labour (Regulation & Abolition) Act - 1970
- All other laws regulation by which Contractor and/or the Company is or may be subjected from the time to time.

f) The Contractor hereby agrees to comply with all the statutory provisions of Labour Laws applicable from time to time in Gujarat.

8 INDEMNITY

a) The Contractor agrees to indemnify the Company from any liability arising from the labour legislation if there is any responsibility cast by statutory authority or any court on the Company on account of the failure on the part of the Contractor.

b) On conclusion of the contract or in case of pre mature termination, the Contractor shall forthwith return all instruments etc. as may have been provided to him by the Company.

c) The Contractor hereby indemnifies and keep the Company indemnified, at all the time, whether during the tenure of contract or three years after conclusion or termination of the Contract, against any loss, damages, expenses, cost, whether directly or indirectly, which is related or attributed or caused by any act of omission, commission, negligence, fraud, misfeasance, act of indiscipline, either on the part of the Contractor or any personnel deputed or engaged by the Contractor and that the Company.

[Emphasis supplied]



25. As per the above terms of the agreement, we find that the complete responsibility of the contractual workers solely rests with the contractor. This we have arrived on the basis of the following clauses of the agreement: -

- (a) *The applicant deals only with the Contractor and give instructions to him only and not to the contractual worker.*
- (b) *The applicant does not have, whether directly or indirectly, any control, supervision or the manner of the discharge, dismissal or retrenchment or reemployment of the workers engaged / employed by the Contractor.*
- (c) *The manpower provided by the Contractor will not be considered as employees of the applicant and they will be solely employees of the Contractor and will not be entitled to any benefits enjoyed by the employees of the applicant.*
- (d) *The applicant will not, in any manner be responsible for any acts, omission or commission of the workers engaged by the Contractor and no direct or indirect claim in this respect shall lie against the applicant.*
- (e) *The applicant will not be responsible in any manner for the staff provided by the Contractor. For the purpose of the Agreement / Contract, the Contractor will be deemed to be an independent agency and in case, the applicant is required to meet any liability in respect of the staff provided by the Contractor, the Contractor shall indemnify and keep the applicant indemnified against any such liability, loss or damages.*
- (f) *The Contractor will be responsible for any criminal act committed by its personnel deputed to the applicant and the Contractor shall be responsible for expenses and contesting any criminal proceeding instituted against personnel of the Contractor.*
- (g) *In case of any accident occurring during the performance of the services causing injury and/or any partial or permanent disablement to any personnel engaged for performance of services by the Contractor, it shall be the responsibilities of the Contractor to bear and make good all medical expenses and compensation in respect of the same.*
- (h) *The Contractor will be liable for due observation and implementation of all the statutory obligations under labour legislation and other enactments, whatsoever as applicable to the Contractor and the workmen employed by him.*
- (i) *The Contractor will get himself registered under Contract Labour (Abolition and Regulation Act) 1970 or any other legislation as is applicable and has to receive the License and Registration No. and will get the same amended as and when required.*
- (j) *The Contractor shall be liable to pay wages, bonus, P.F., ESI and carry out other statutory liabilities in respect of contract labour engaged by the Contractor.*
- (k) *The Contractor will provide for their own staff and will be liable to pay salary, wages and emoluments (As per minimum wages Act), Provident Fund, ESIC contributions and other dues in respect of their staff.*
- (l) *the Contractor will also extend benefits if applicable, under the below various Labour legislation Acts to their personnel working in the presence of the agreement.*



(m) The Contractor agrees to indemnify the applicant from any liability arising from the labour legislation if there is any responsibility cast by statutory authority or any court on the applicant on account of the failure on the part of the Contractor

Therefore, we are unable to accept the applicant's contention that there exists an employee-employer relationship with the contractual workers.

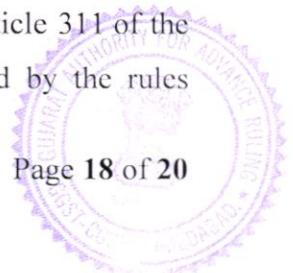
26. The applicant has also relied upon the judgement of the Supreme court in the case of *MMR Khan & Othrs Vs UOI*-1990 AIR 937 to buttress their argument that contractual workers engaged through third-party agencies and availing canteen facilities under the applicant's supervision and control must be regarded as employees for all statutory and legal purpose. We have already seen that as per the agreement, the applicant would deal only with the contractor and give instructions to him only and not to the contractual worker. Thus, it appears that the supervision and control over the workers is of the contractor and not the applicant. Further, the facts and circumstances in *MMR Khan* case are entirely different as the Supreme Court was dealing with the workers employed in Railway canteens. We find that the following aspects led the Supreme Court to hold that the contractual workers employed in canteens are regarded as employees of the Railways.

(a) As per the Railway Establishment Manual, although the Railway Administration may employ anyone such as a Staff Committee or a Co-operative Society for the management of the canteens, the legal responsibility for the proper management rests not with such agency but solely with the Railway Administration. If the management of the canteen is handed over to a consumer cooperative society the bye-laws of such society have to be amended suitably to provide for an overall control by the Railway Administration.

(b) The Administrative Instructions on Departmental canteens in terms state that even those canteens which are not governed by the said Act have to be under a complete administrative control of the concerned Department and the recruitment, service conditions and the disciplinary proceedings to be taken against the employees have to be taken according to the rules made in that behalf by the said Department.

(c) The Railway Board by its circular dated June 8, 1981 had communicated that it was decided to treat the employees of all statutory canteens, as railway servants irrespective of the type and management of the canteens, and to extend to them the conditions of service and emoluments of the railway servants as existed on October 21, 1980, w.e.f. 22nd October 1980.

(d) The Government has a complete control over the canteens and the workers employed therein are holders of civil posts within the meaning of Article 311 of the Constitution. Their recruitment and service conditions are governed by the rules



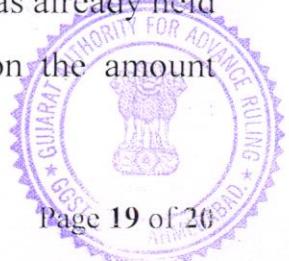
applicable to the employees of the Government Deptt. /Office/Establishment to which the canteens are attached.

Therefore, what appealed to the Supreme Court was that the Government had total control over the canteens and the recruitment and service conditions of the workers are governed by the rules applicable to Government employees. In the case of the applicant, the terms of the agreement specifically stipulate that the applicant will not have, whether directly or indirectly, any control, supervision or the manner of the discharge, dismissal or retrenchment or reemployment of the workers engaged / employed by the Contractor.

27. As regards the rest of the contentions that the recovery of the amount would not qualify as supply under Section 7 of the CGST Act, the same has already been dealt with by this Authority in *Re: Troikaa Pharmaceuticals Ltd.* The applicant has also submitted that the supply should be effected in the course of furtherance of business and the activity under evaluation does not fall within the definition of business. Further, the applicant has submitted that as per the Allahabad High Court judgement of *Indian Institute of Technology Vs State of Uttar Pradesh*, canteen facility cannot be treated as an ancillary to the business activity. We find that the Bombay High Court in the case of *CCE, Nagpur Vs Ultratech Cement Ltd-* [2010 (260) ELT 369(Bom)] while dealing with the credit of service tax paid on outdoor catering service in canteen for employees had held that such outdoor catering service, which are provided as mandated under the Factories Act, 1948 have nexus or integral connection with the manufacture of final product. Therefore, supply of canteen services is effected in the course of furtherance of business as it has an integral connection with the manufacture of final product by the applicant.

28. The other rulings of the various Advance Ruling Authorities relied upon by the applicant are with respect to the applicability of GST on subsidized deduction made by the applicants from their employees, which we have already held to be not leviable.

29. We now come to the next question regarding whether the GST is payable on the amount deducted from the workers or on the open market value i.e the value charged by the canteen service provider. We find that this authority has already held in *Re: Troikaa Pharmaceuticals Ltd* . that the GST is leviable on the amount



representing the contractual worker portion of canteen charges, which is collected by M/s Troikaa Pharmaceuticals Ltd and paid to the canteen service provider.

30. In view of the foregoing, we rule as under: -

RULING

Ques 1: - Whether subsidized deduction made by the applicant from the employees and workers towards canteen facility provided by the canteen service provider at the canteen facility would be considered as a 'supply' by the applicant under the provisions of Section 7 of the CGST Act, 2017 and GGST Act, 2017.

Ans 1: -

(i) Subsidized deduction made by the applicant from the employees towards canteen facility provided by the canteen service provider at the canteen facility would not be considered as a 'supply' by the applicant under the provisions of Section 7 of the CGST Act, 2017 and GGST Act, 2017.

(ii) Subsidized deduction made by the applicant from the workers towards canteen facility provided by the canteen service provider at the canteen facility would be considered as a 'supply' by the applicant under the provisions of Section 7 of the CGST Act, 2017 and GGST Act, 2017.

Ques 2: - In case answer to above is yes,

- Whether GST is payable on the amount recovered as deduction from the salaries of employees to worker contractors or an open market value?*

Ans 2: - GST is payable on the amount recovered as deduction from the payment to worker's contractor.


(Sushma Vora)
Member (SCST)

Place: Ahmedabad
Date: 19.11.2025




(Vishal Malani)
Member (CGST)