



सत्यमेव जयते

प्रधान आयुक्त का कार्यालय,
Office of the Principal Commissioner,
केंद्रीय जीएसटी अहमदाबाद दक्षिण आयुक्तालय
Central GST , Commissionerate- Ahmedabad South,
छठी मंजिल, अम्बावाड़ी अहमदाबाद ३८००१५.
6th Floor, GST Bhavan, 380015



फा.सं. **STC/04-14/Troikaa/2020-21**

DIN : 20221264WS00002782BF

आदेश की तारीख: Date of Order: 22/12/2022
जारी करने की तारीख: Date of Issue: 22/12/2022

द्वारा पारित /Passed by: Shri T.G.Rathod , Additional Commissioner

मूल आदेश सं./Order-In-Original No.: 61/CGST/Ahmd-South/ADC/ TGR/2022-23

यह प्रति उस व्यक्ति)यों (को ,जिसके)जिनके (लिए यह आदेश जारी किया गया है ,उसके)उनके (व्यक्तिगत उपयोग के लिए निःशुल्क प्रदान की जाती है ।

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यदि कोई व्यक्ति इस आदेश से स्वयं को असंतुष्ट अनुभव करता है, तो वह इस आदेश के विरुद्ध आयुक्त)अपील ,(केन्द्रीय जीएसटी ,केन्द्रीय जीएसटी भवन ,आंबावाड़ी ,अहमदाबाद- 15को प्रारूप इ.ए.-1 में अपील कर सकता है । उक्त अपील पक्षकार पर आदेश तामील होने अथवा अथवा उसे डाक द्वारा प्राप्त करने की तारीख से दो माह के भीतर दाखिल की जानी चाहिए । इसपर रुपए -/2.00केवल का न्यायालय शुल्क टिकट लगा होना चाहिए ।

Any person deeming himself aggrieved by this Order may appeal against this order in Form **S.T.4** to Commissioner (Appeals), Central GST, Central GST Bhavan, Near Government Polytechnic, Ambawadi, Ahmedabad -15 within sixty days from date of its communication. The appeal should bear a court fee stamp of Rs.2.00/- only.

उक्त अपील दो प्रतियों में प्रारूप सं.इ.ए 1-में दाखिल की जानी चाहिए । उसपर केन्द्रीय उत्पाद शुल्क)अपील (नियमावली 2001 ,के नियम 3के उपबंधों के अनुसार अपीलकर्ताओं जद्वारा हस्ताक्षर किए जाने चाहिए । इसकेसाथ निम्नलिखित को संलग्न किया जाए :

The Appeal should be filed in form No. S.T-4 in duplicate. It should be filed by the appellants in accordance with provisions of Rule 108 of the CGST Rules 2017. It shall be accompanied with the following:

उक्त अ की प्रति ।

Copy of the aforesaid order.

निर्णय की दो प्रतियाँ)उसमें से एक उस आदेश की प्रमाणित प्रतिलिपि होनी चाहिए जिसके विरुद्ध अपील की गई है (अथवा उक्त आदेश की अन्य प्रति जिसपर रु -/2.00का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए ।

Copies of the Decision (one of which at least shall be certified copy of the order appealed against) or copy of the said Order bearing a court fee stamp of Rs. 2.00/-.

इस आदेश के विरुद्ध आयुक्त)अपील (में शुल्क के 7.5% जहां शुल्क एवं जुर्माना का विवाद है अथवा जुर्माना जहां शिर्फ जुर्माना के बारे में विवाद है उसका भुक्तान करके अपील की जा सकती है ।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

संदर्भ/Reference : कारण बताओ सूचना फा.सं. F.No. **STC/37/O&A/SCN/TPL/D-III/13-14** dated 22/04/2014 issued to M/s. Troikaa Pharmaceuticals Limited, GF-1/B1, 3rd & 4th Floor,Commerce House-1, Satya Marg, Off. Judges Bunglow Road, Ahmedabad-380 054.

BRIEF FACTS OF THE CASE:-

M/s. Troikaa Pharmaceuticals Limited, GF-1/B1, 3rd & 4th Floor, Commerce House-1, Satya Marg, Off. Judges Bunglow Road, Ahmedabad-380 054 (hereinafter referred to as 'the assessee') holding Service Tax Registration No. AABCT0228KST001 are engaged in providing the various taxable services viz. Business Auxiliary Service, Legal Consultancy Service, Sponsorship Service and Transport of Goods by Road (As service recipient) & other financial services, Rent-A-Cab Operator Services (As Service recipient) and other taxable service other than 119 listed.

2. The assessee are discharging their service tax liability in respect of some taxable services, as a recipient of taxable service, which were provided from outside India and received in India in view of Section 66A of the Finance Act,1994 read with Taxation of Services (Provided from Outside India and received in India) Rules,2006. They were also discharging their service tax liability in respect of some of the taxable services on reverse charge mechanism, as a recipient of taxable service, which are specified in Notification No, 30/2012-ST dated 22/06/2012 (effective from 01/07/2022).

3. During the course of audit of service tax records of the assessee, it was noticed from the balance sheets and profit and loss accounts as well as foreign bank ledgers that the assessee has paid bank charges and commission to foreign bank and has not paid service tax on the same. The assessee has borne bank charges and commission to foreign banks for export realization, import payments and other similar services. The same is taxable in the hands of the company namely "Banking & Financial Services" under Section 65(105)(zm) of the Finance Act,1994 read with Taxation of Services (Provided from outside India and received in India) Rules,2006. They have not paid service tax under Section 66A of the Finance Act,1994 read with the said Rules, as a recipient of services received from outside India. On being pointed out, the assessee did not agree to

the views of the auditors and did not pay the service tax on foreign bank charges during the period October,2008 to March,2013 on the taxable value of Rs.62,26,330/- amounting to Service-Tax liability of Rs.6,89,066/-.

4. It was also observed during the audit that the assessee had made payment towards professional fees in foreign currency. From the ledgers/invoices produced by the assessee, it was observed that the said expense were related to official fees and professional fess which includes reimbursement of expenses such as copy charges, typing charges, courier charges, translation fees, transport charges, fax charges, postage and incidental charges, document production and sundry communication charges etc. The services received by the assessee falls under the category of legal consultancy service which has been brought under Service Tax net with effect from 01/09/2009 vide Notification No. 26/2009-ST dated 09/08/2009. Accordingly, the service tax liability of Rs.14,12,215/- appeared to be recoverable from the assessee during the period from 2009-10 to 2012-13.

5. Accordingly a show cause notice F.No.STC-37/O&A/SCN/TPL/D-III/13-14 dated 22/04/2014 was issued by the Additional Commissioner, Service Tax, Ahmedabad to the assessee inter alia alleging that they had failed to pay service tax of Rs.6,89,066/- for the period from October,2008 to March,2013, under banking and financial services, under reverse charge mechanism. The show cause notice further alleged that the assessee had failed to pay service tax of Rs.14,12,215/- under legal charges for the period from September,2009 to March,2013. The show cause notice demanded the service tax totally amounting to Rs.21,01,281/- invoking the extended period under Section 73(1) of the Finance Act,1994 alongwith interest under Section 75 and also proposed penalty under Section 76, Section 77(2) and Section 78 of the Finance Act, 1994.

6. The aforesaid show cause notice dated 22/04/2014 was adjudicated vide Order-in-Original No. AHM-SVTAX-000-JC-002-15-16 dated 15/04/2015 by the Joint Commissioner, Service Tax, Ahmedabad wherein the service tax demand of Rs.21,01,281/- (Rs.6,89,066/- and Rs.14,12,215/-) was confirmed. Further, the adjudicating authority also ordered to recover interest from the assessee under Section 75 of the Finance Act,1994, imposed a penalty of Rs.10,000/- under Section 77(2) of the Finance Act,1994 and penalty of Rs.21,01,281/- under Section 78 of the Finance Act,1994.

7. Being aggrieved, the assessee filed an appeal before Commissioner (Appeals), who vide OIA No. AHM-EXCUS-001-APP-111 to 112-2018-19 dated 08/11/2018 at para 10 of the OIA ordered as under:

“10. To summarize as far as the appeal mentioned at Sr. No.1 against OIO No. AHM-SVTAX-000-JC-002-15-16 dated 15/04/2015 is concerned, it is ordered as follows:

[a] the confirmation of the demand of Rs.6,89,066/- alongwith interest and penalty, in respect of service tax on Banking and Financial Services i.e. Tax on expenditure incurred by the appellant on bank charges and commission paid to foreign banks under RCM is set aside; and

[b] in respect of confirmation of demand on legal consultancy services i.e. service tax under reverse charge mechanism towards expenditure incurred on professional fees in foreign currency is concerned, the demand, interest and penalty is upheld, subject to the following: -

[i] that the amount relating to reimbursements should not form part of the gross amount charged for computing service tax;

[ii] the value which is attributable to services provided prior to 1.9.2009, should not be included for computing the service tax.

The adjudicating authority is therefore directed to look into the claim of the appellant in respect of the aforementioned two issues only and thereafter re-compute the demand, interest and penalty on the appellant, keeping in mind the directions given in para 9.2 and 9.4 supra. Needless to state the appellate will provide all the necessary documents, to substantiate his claim to the adjudicating authority within one month of the receipt of this order, in respect of the above mentioned two issues."

7.1 The present adjudication is on the basis of the appellate authority partly remanding the matter to the adjudicating authority as discussed at para supra. Hence, I take up the matter for adjudication for the limited issues as directed by the appellate authority vide OIA AHM-EXCUS-001-APP-111 to 112-2018-19 dated 08/11/2018.

8. DEFENSE REPLY :-

The assessee vide their letter dated 07/12/2022 submitted their defense reply wherein they stated that the Appeal Order No. AHM-EXCUS-001-APP-111 to 112 - 2018-19 dated 01-01-2019 was received by them on 02-01-2019 and that as per instruction of appeal order, they had submitted all the details along with covering letter on 30-01-2019 i.e. within 30 days from the receipt date of appeal order and enclosed copy of the letter dated 30/01/2019 and further submitted as under :

- (1) The OIO has demanded an amount of Rs. 21,01,281/ - as Service Tax not paid on 'foreign bank charges' and 'professional fees' for the period 01-09-2009 to 31-03-2013 wherein the amount of Service Tax payable on foreign bank charges amounting to Rs.6,89,066/- has been held in their favour vide Appeal Order whereas the amount of Service payable under profession fees (Outside India) is Rs.14,12,215. For the remaining portion of Service-Tax,

they have stated that the service tax payable has been calculated as under:

FY	Professional Charges	ST not leviable because ST introduced w.e.f. 01-09-2009	Service tax paid on the amount from 01-07-2012 to 31-03-2013	Net Amount on which Service Tax is to be recovered	Applicable ST Rate	Amount of Service Tax
2009-10	34,86,113	3,87,776	-	30,98,337	10.30%	3,19,129
2010-11	21,86,631	-	-	21,86,631	10.30%	2,25,223
2011-12	29,49,526	-	-	29,49,526	10.30%	3,03,801
2012-13	63,74,736	-	18,11,828	45,65,608	12.36%	5,64,062
Total	1,49,97,006	3,87,776	18,11,828			14,12,215

(2) That, while deriving at the amount of service tax payable of Rs. 14,12,215/-, the due consideration was not given for reimbursement of expenses as held in the Appeal Order and therefore they are representing the facts as under after considering the reimbursement of expenses:

Financial Year	Total Invoice value	Amount on which Service Tax is not payable						S. Tax rate %	Service Tax payable	Service Tax paid	Net Service tax payable
		S. Tax not leviable because ST introduced w.e.f. 01-09-09	Reimb. of charges	Reimb. of Govt. Fees paid to the Foreign Govt.	Reimb. of VAT/S. Tax charged by Attorney in invoice	Total amount on which S. Tax in not payable	Value of Service rendered				
A	B	C	D	E	F	G	H	I	J	K	L
2009-10	3486113	1040490	270742	952640	22481	2286353	1199760	10.30	123575	-	123575
2010-11	2186631	59753	49572	864505	3251	977081	1209550	10.30	124584	-	124584
2011-12	2949526	31653	64204	765579	34241	895677	2053848	10.30	211546	-	211546
2012-13	6374736	-	91575	2453720	105057	2650352	3724384	12.36	460334	476616	-16282
	14997006	1131896	476093	5036444	165030	6809463	8187542		920039	476616	443424

(3) That the major amount is in respect of the reimbursement of expenses on which service tax is not payable vide order of Commissioner Appeal as per para 10; that they had already submitted all the details and documents again along with their reply dated 30-01-2019 and that for the reference they are again enclosing the copy of invoices; that the net amount payable is only Rs. 4,43,424/- and that they have already paid Rs. 14,12,215/-, and submitted the details of the said payment as under:

Sr. No	Challan Amount	Challan Reference No	Challan Date
1	319129	00053472606201501830	26/06/2015
2	225223	00053472606201501805	26/06/2015
3	303801	00053472606201501800	26/06/2015
4	564062	00053472606201501790	26/06/2015
Total	1412215		

(4) That there is no liability of service tax in the matter for the period under consideration and that there is a refund because of excess payment made under protest; that they request to drop the proceedings giving effect to the Appeal order and grant the refund along with interest.

(5) That, before any adverse decision taken in the matter, they requested for a personal hearing and that they reserved to submit further reply, explanation, documentary evidences, affidavits as may be required in the matter.

9. PERSONAL HEARING:-

9.1 The personal hearing in the matter was fixed on 04/11/2022, 16/11/2022 and 29/11/2022. Shri Karthik R Vadher, Assistant General Manager(Taxation), Shri Sandip Gupta, Consultant, CA and Shri Chetan Brahmhatt, Senior Executive appeared on behalf of the assessee. During the personal hearing they stated that the OIA is dated 08/11/2018 and they had received it on 02/01/2019; that they need to check if any correspondence/submissions pursuant to the Appellate Authority's order dated 08/11/2018, received as claimed on 02/01/2019; that they have been given time of one week and to submit their reply by 06/12/2022. They submitted that the long delay is due to new joining of executives in the company and the staff being new.

9.1 The assessee in their written submission dated 07/12/2022 had requested for another personal hearing before deciding the case. Accordingly, personal hearing was held on 09/12/2022 wherein Shri Sandip Gupta, Consultant, CA and Shri Chetan Brahmhatt, Senior Executive appeared on behalf of the assessee and requested to consider the submissions made in compliance of the Appellate order.

DISCUSSION AND FINDINGS:-

10.1 I have carefully gone through the case records including the show cause notice, OIO and OIA dated 01/01/2019 and the

submissions made in writing as well as during the course of personal hearing.

10.2 The present adjudication is on the basis of the appellate authority partly remanding the matter to the adjudicating authority vide OIA No. AHM-EXCUS-001-APP-111 to 112-2018-19 dated 08/11/2018. In the present case, out of the demand of Rs.21,01,281/-, Commissioner (Appeals) has set aside the demand of Rs.6,89,066/-. Further, Commissioner (Appeals) in respect of confirmation of demand of Rs.14,12,215/- on legal consultancy services i.e. service tax under reverse charge mechanism towards expenditure incurred on professional fees in foreign currency is concerned, the demand, interest and penalty has been upheld on the grounds subject to recomputation by the adjudicating authority that (i) the amount relating to reimbursements should not form part of the gross amount charged for computing service tax and (ii) the value which is attributable to services provided prior to 1.9.2009, should not be included for computing the service tax.

10.3 In the present case, the Service Tax demand has been upheld alongwith interest and penalty on merits by Commissioner (Appeals) subject to re-computing the amount of demand in terms of directions as per para 10 of the OIA No. No. AHM-EXCUS-001-APP-111 to 112-2018-19 dated 08/11/2018. I therefore do not go into the merits of the case and I restrict my discussions/findings to re-computation of the demand of duty after verification of the records as per the directions of the Appellate authority.

10.4 I find that the assessee has submitted the documents for verification vide letter dated 30/01/2019. I further find that the assessee has also produced the documents for verification alongwith their written submissions dated 07/12/2022. Based on the documents provided by the assessee, I now proceed to re-compute the amount of demand in terms of directions given by Commissioner (Appeals) as per para 10 of the OIA No. No. AHM-EXCUS-001-APP-

111 to 112-2018-19 dated 08/11/2018 in respect of the following two issues:-

As regards the first issue viz :-

- (I) *“para 10(b)(i) that the amount relating to reimbursements should not form part of the gross amount charged for computing service tax.”*

On verification of the documents provided by the assessee, I find that an amount of Rs.39,53,187/- relating to reimbursements which was part of the gross amount charged for computing service tax is excludible from the total taxable value of Rs.1,49,97,006/- for computing service tax demand as per directions of Commissioner (Appeals) at para 10(b)(i) of the OIA. I also find that the assessee has failed to produce the documents in respect of professional charges of Rs.41,30,392/- (Rs.11,03,695/- for 2009-10, Rs.4,40,903/- for 2011-12 and Rs.25,85,794/-). Accordingly, the same cannot be considered as reimbursement charges and hence not allowed for deductions.

As regards the second issue viz:-

- (II) *“para 10(b)(ii) the value which is attributable to services provided prior to 1.9.2009 should not be included for computing the service tax.”*

On verification of the documents provided by the assessee, I find that an amount of Rs.6,34,448/- relates to services provided prior to 01/09/2009 and which was part of the gross amount charged for computing service tax is required to be excluded from the total taxable value of Rs.1,49,97,006/- for computing service tax demand as per directions of Commissioner (Appeals) at para 10(b)(ii) of the OIA.

11.1 The assessee has submitted that the net amount payable is only Rs. 4,43,424/- and they have already paid Rs. 14,12,215/-. Hence there is no liability of service tax and there is a refund because of excess payment made under protest and have requested to drop the proceedings giving effect to the Appeal order and to grant the refund along with interest.

11.2 With reference to the assessee's submissions at para supra that they have already made payment of Rs.14,12,215/- and they are liable to pay only Rs.4,43,424/- and that they are eligible for refund alongwith interest, I find that the assessee had not raised any such grounds before the Appellate authority and hence the same is not part of the present denovo proceedings. I am strictly bound by the Appellate Authorities directions for recomputation of Service-Tax amount as per para 10 of the OIA and accordingly I refrain from passing any order in respect of the aforesaid submissions made by the assessee. Accordingly, after taking into consideration, the directions of Commissioner (Appeals) as discussed at para supra, the final calculation after recomputation on which the assessee is liable to pay service tax is worked out as under: -

A	B	C	D	E	F	G	H
Financial Year	Professional charges paid during the year	S.Tax not leviable as service introduced w.e.f. 01/09/2009	Reimbursement of charges allowed as per OIA wherein documents provided by the assessee	Reimbursement of Govt. Fees paid to the Foreign Govt allowed as per OIA wherein documents provided by the assessee	Service Tax paid on the amount from 01/07/2012 to 31/03/2013	Value on which Service tax is to be levied after allowing deductions (B-C-D-E-F)	Service tax payable (Rs.)
2009-10	3486113	574989	244437	880380	0	1786307	183989.62
2010-11	2186631	59459	47977	843092	0	1236103	127318.61
2011-12	2949526	0	63266	766889	0	2119371	218295.21
2012-13	6374736	0	84559	1022587	1811128	3456462	427218.7
	14997006	634448	440239	3512948	1811128	8598243	956822.14

11.3 In view of the above discussions and findings, Service-Tax amounting to Rs.9,56,822/- is liable to be recovered from M/s. Troikaa Pharmaceuticals Limited under the proviso to Section 73(1) along with interest and penalty as already upheld by the Appellate Authority.

12. In view of my above findings, I pass the following order:

ORDER

- i) I confirm the demand of Service Tax amounting to **Rs. 9,56,822/- (Rupees Nine lakhs fifty six thousand eight hundred twenty two only)** including Education Cess and Higher Secondary Education Cess) under proviso to Section 73(1) of the Finance Act,1994;
- ii) I order recovery of interest at the applicable rate under the provisions of section 75 of the Finance Act,1994 in respect of (i) above at appropriate rates;
- iii) I impose equivalent penalty of **Rs.9,56,822/- (Rupees Nine lakhs fifty six thousand eight hundred twenty two only)** under Section 78(1) of the Finance Act,1994 in respect of (i) above;
- iv) I impose a penalty of **Rs.10,000/- (Rupees Ten thousand only)** under Section 77(2) of the Finance Act,1994 for the contravention of the provisions of Finance Act, 1994 or the rules made thereunder.


5212
(T.G.Rathod)

Additional Commissioner
Central GST, Ahmedabad South

DIN-20221264WS00002782BF

By Registered Post A.D./Email

F.No. STC/04-14/Troikaa/2020-21

Dated : 22/12/2022

To,
M/s.Troikaa Pharmaceuticals Limited,
GF-1/B1, 3rd & 4th Floor,
Commerce House-1, Satya Marg,
Off. Judges Bunglow Road,
Ahmedabad-380 054.

Copy to :

- 1) The Commissioner, CGST, Ahmedabad South.
- 2) The Assistant Commissioner, Central Tax, TAR Section, HQ, Ahmedabad South
- 3) The Assistant Commissioner, CGST Division-VI, Ahmedabad South
- 4) The Superintendent, Range-II, CGST, Division-VI, Ahmedabad South.
- 5) The Superintendent, Central Tax, Systems HQ, Ahmedabad South for uploading on the website.
- 6) Guard file.