


<p>आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हाँउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009</p>		<p>Office of the Commissioner of Central Goods &amp; Services Tax &amp; Central Excise, Ahmedabad North, Custom House(1<sup>st</sup> Floor) Navrangpura, Ahmedabad-380009</p>
<p>फ़ोन नंबर/ PHONE No.: 079-2754 4599 फ़ैक्स/ FAX : 079-2754 4463 E-mail:- <a href="mailto:oaahmedabad2@gmail.com">oaahmedabad2@gmail.com</a></p>		

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. STC/15-114/OA/2021.

DIN-20220764WT000000D0A5

आदेश की तारीख / Date of Order : 04.07.2022  
जारी करने की तारीख / Date of Issue : 05.07.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV  
आयुक्त / COMMISSIONER

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 9 /2022-23

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

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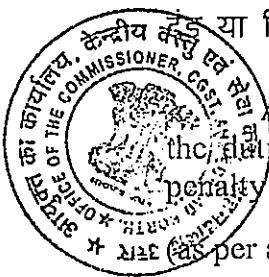
2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण , द्वितीय तल, बाहुमली भवन असरवा, गिरधर नगर पुल के पास, गिरधर नगर, अहमदाबाद, गुजरात 380004 को संबोधित होनी चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan Asarwa, Near Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad, Gujarat 380004.

2.1 इस आदेश के विरुद्ध अपील न्यायाधिकरण में अपील करने से पहले मांगे गये शुल्क के 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं या विवादग्रस्त दंड शामिल है ।

An appeal against this order shall lie before the Tribunal 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.

(As per amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)





**ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- /2022-23**

M/s. Utility Labour Suppliers, 3 Gopikunj Society, Sun N Step Club, Memnagar, Ahmedabad - 380052, were issued SCN No. STC/15-114/OA/2021 dated 23.04.2021 by the Commissioner, Central GST & Central Excise, Ahmedabad North, Ahmedabad..

**BRIEF FACTS OF THE CASE PERTAINING TO THE SCN ISSUED TO M/S. UTILITY LABOUR SUPPLIERS, ARE AS FOLLOWS:**

M/s. Utility Labour Suppliers, 3 Gopikunj Society, Sun N Step Club, Memnagar, Ahmedabad - 380052 (hereinafter referred to as the 'Assessee' for the sake of brevity) were engaged in providing taxable services, and were holding Service Tax Registration No. BJVPP5858CSD001.

2. Analysis of "Sales/Gross Receipts from Services (Value from ITR)", the "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" and "Gross value of Services Provided" in respect of M/s. Utility Labour Suppliers, was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 and 2016-17, and details of the said analysis were shared by the CBDT with the Central Board of Indirect Taxes (CBIC).

3. As per the records available with the Divisional Office of Division-VII and on going through the Third Party Data provided by CBDT of the said assessee for the F.Y. 2015-16 and 2016-17, the total sales of service (Value from ITR/ Form 26) were found to be not tallying with Gross Value of Service Provided, as declared in ST-3 Return of F.Y. 2015-16 and 2016-17. Therefore, it appeared that the said assessee had declared less/not declared any taxable value in their Service Tax Returns (ST-3) for F.Y. 2015-16 and 2016-17 as compared to the Service related taxable value declared in their Form 26AS ("Total Amount paid /Credited Under 194C, 194H, 194I, 194J") for 2015-16 and 2016-17. The difference in value as observed for F.Y. 2015-16 and 2016-17 was found to be as under:

Sr. No.	FY	Taxable Value as per ST-3 Returns (in Rs.)	Gross Receipts from services (Value from ITR/26AS) (in Rs.)	Difference Between Value of Services from ITR/26AS and Gross Value in Service tax provided (in Rs.)	Resultant Service tax short paid (in Rs.)
	2015-16	0	7,01,55,702	7,01,55,702	1,01,72,576
	2016-17	0	7,15,04,419	7,15,04,419	1,07,25,662
			14,16,60,121	14,16,60,121	2,08,98,239



Therefore, it appeared that the said assessee had short paid service tax to the extent of Rs. 2,08,98,239/- (including Cess) on the differential value of Rs. 14,16,60,121/-.

4. Accordingly, the service tax liability of M/s. Utility Labour Suppliers was worked out on the basis of income mentioned in ITR/Form 26AS, which were shared by Income tax Department. The said income was considered as the Total Taxable value in order to ascertain the service tax liability under Section 67 of the Finance Act, 1994.

5. As per Section 68 of the Finance Act, 1994 every person liable to pay service tax shall pay service tax at the rate specified in Section 66B in such manner and within such period which is prescribed under Rule 6 of the Service tax Rules 1994.

6. As per the provisions of Section 70 (Furnishing of Returns) of the Finance Act, 1994:

“(1) Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency and with such late fee not exceeding twenty thousand rupees, for delayed furnishing of return, as may be prescribed.

(2) The person or class of persons notified under sub-section (2) of section 69, shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed.”

7. As per the provisions of Section 73(1) of the Finance Act, 1994 where any Service Tax has not been levied or paid or has been short levied or short paid by reasons of willful mis-statement or suppression of facts with intent to evade payment of Service Tax, the Central Excise Officer may within five years from the relevant date, serve a notice on the person chargeable with Service Tax which has not been levied or paid or which has been short levied or short paid requiring him to show cause why he should not pay the amount specified in the notice.

As per Rule 6 of the Service Tax Rules, 1994, the Service Tax shall be paid on the credit of the Central Government by 5<sup>th</sup> day of the month, immediately following the said calendar month in which the payments are received, towards



the value of taxable service. Rule 7 of the Service Tax Rules, 1994 stipulates that the assessee shall submit their Service Tax returns in the form ST-3 within the prescribed time.

9. From the documentary evidence available at the relevant time, it appeared that the said assessee had failed to pay/short paid/deposit Service Tax to the extent of Rs. 2,08,98,239/- (including Cess) which was arrived at on the basis of difference of taxable value declared in their ST-3 returns during the Financial Year 2015-16 and 2016-17 vis-à-vis "Sales /Gross Receipts from Services (ITR)" OR "Total Amount paid /Credited Under 194C, 194H, 194I, 194J" (as per Form 26AS). The said short payment appeared to have been done with intent to evade payment of Service Tax. Accordingly, it appeared that the said assessee had failed to discharge the Service Tax liability of Rs. 2,08,98,239/- (including Cess) worked out on value of Rs. 14,16,60,121/- and therefore, the said Service Tax was required to be demanded/recovered from them under Section 73(1) of the Finance Act, 1994 read with Section 68 of the Finance Act, 1994.

10. Therefore, it appeared that the said assessee had (i) failed to declare correctly, assess and pay the service tax due on the taxable services provided by them and to maintain records and furnish returns, in such form i.e. ST-3 and in such manner and at such frequency, as required under Section 70 of the Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994; (ii) failed to determine the correct value of taxable service provided by them under Section 67 of the Finance Act, 1994; (iii) failed to pay the Service Tax correctly at the appropriate rate within the prescribed time in the manner and at the rate as provided under the said provision of Section 66B and Section 68 of the Finance Act, 1994 and Rules 2 & 6 of the Service Tax Rules, 1994 in as much as they had not paid service tax as worked out in the Table for Financial Year 2015-16 and 2016-17; (iv) contravened the provisions of Section 68, and 70 of the Finance Act, 1994 read with rule 6, and 7 of Service Tax Rules, 1994 which appeared to be punishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time; (v) made themselves liable to pay interest at the appropriate rates for the period from due date of payment of service tax till the date of actual payment as per the provisions of Section 75 of the Finance Act, 1994; (vi) contravened the provision of Rule 7 read with Section 70 of the Finance Act, 1994 in as much as they failed to file ST-3 Returns by due date; (vii) also contravened Section 77 of the Finance Act, 1994 in as much as they did not provide required data /documents as called for, from them.



11. It had been noticed that at no point of time, the assessee had disclosed full, true and correct information about the value of the services provided by them or intimated to the Department regarding receipt/providing of Services of the differential value, that had come to the notice of the Department only after going through the Third Party CBDT data generated for the Financial Year 2015-16 and 2016-17. From the evidences gathered/ available at the relevant time, it appeared that the said assessee had knowingly suppressed the facts regarding receipt of/providing of services by them, and thereby not paid/short paid/not deposited Service Tax thereof to the extent of Rs. 2,08,98,239/-. Thus, it appeared that there was a deliberate withholding of essential and material information from the department about service provided and value realized by the assessee which were in direct contradiction with the spirit of self assessment and faith reposed in the service provider by the government.

12. As per Section 75 ibid every person liable to pay the tax in accordance with the provisions of Section 68, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, is liable to pay simple interest (at such rate not below ten per cent and not exceeding thirty six per cent per annum, as is for the time being fixed by the Central Government, by Notification in the Official Gazette) for the period by which such crediting of the tax or any part thereof is delayed. It appeared that the said assessee had short paid/not-paid Service Tax of Rs. 2,08,98,239/- on the actual value received towards taxable services provided which appeared to be recoverable under proviso to Section 73(1) of the Finance Act, 1994 along with interest under Section 75 ibid not paid by them under Section 68 of the Finance Act read with Rule 6 of Service Tax Rules, 1994 inasmuch as the said assessee had suppressed the facts from the department and had contravened the provisions with an intent to evade payment of Service Tax. The said assessee had not discharged their Service tax liability and hence was liable to pay interest under Section 75 of the Finance Act.

13. All the above acts of contravention on the part of the said assessee resulted into non-payment of Service Tax and they appeared to have been committed by way of suppression of material facts and contravention of provisions of Finance Act, 1994 with an intent to evade payment of Service Tax as discussed in the foregoing paras and therefore, the Service Tax amounting to Rs. 2,08,98,239/- (inclusive of Cess) not paid was required to be demanded and recoverable from them under the proviso to Section 73(1) of the Finance Act,



1994 alongwith Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994.

14. All these acts of contravention of the provisions of Section 67, Section 68 and Section 70 of the Finance Act, 1994 read with Rule 6 & Rule 7 of the Service Tax Rules, 1994 appeared to be punishable under the provisions of Section 76 and 77 of the Finance Act, 1994 as amended from time to time. In view of the above, it appeared that the said assessee had contravened the provisions of Finance Act, 1994 and the rules made there under. All the contraventions and violations made by the said assessee appeared to have rendered the assessee liable to penalty under Section 76 & Section 77 of the Finance Act.

15. In addition to the contravention, omission and commission on the part of the said assessee as stated in the foregoing paras, it appeared that the said assessee had willfully suppressed the facts, nature and value of service provided by them with an intent to evade the payment of Service Tax thus rendering them liable for penalty under Section 78 of the Finance Act, 1994.

16. The assessee was given opportunity to appear for pre-SCN consultation on 22.04.2021, but the same was not attended by them.

17. Therefore, Show Cause Notice dated 23.04.2021 was issued to the assessee asking them as to why:

- (i) Differential amount of Service Tax of Rs. 2,08,98,239/- (Rupees Two Crore Eight Lakh Ninety Eight Thousand Two Hundred Thirty Nine Only) short/ not paid, should not be confirmed and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994.
- (ii) Interest at the appropriate rate should not be demanded and recovered from them under Section 75 of the Finance Act, 1994;
- (iii) Penalty should not be imposed upon them under the provision of Section 78 of the Finance Act, 1994.
- (iv) Penalty should not be imposed upon them for late filing of ST-3 Returns under the provisions of Rule 7C of the Service Tax Rules 1994.
- (v) Penalty should not be imposed upon them under the provision of Section 77(2) of the Finance Act, 1994, for failure to assess their correct Service Tax Liability and for failure to file correct Service Tax Returns, as required



under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

**DEFENCE REPLY:**

18. The assessee vide their letter dated 07.05.2021 (received on 17.05.2021) submitted their written submission, wherein they interalia have stated that they have provided Manpower Recruitment Service to Body Corporate, therefore, they were not liable to pay service tax in terms of Notification No. 07/2015 ST dated 01.05.2012. They have enclosed the copy of ST-3 Returns and Notification No. 07/2015-ST.

The assessee vide letter dated 21.01.2022, have further submitted Balance Sheet / P& L Accounts, ITR, Form 26AS for FY 2015-16 & 2016-17, sample invoices (10).

The assessee vide letter dated 27.05.2022 have submitted additional documents viz. sales register for FY 2015-16 & 2016-17, two contract agreements and soft copy of sample invoices.

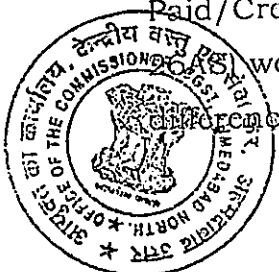
**PERSONAL HEARING:**

19. Personal Hearing was granted to the assessee on 23.05.2022, which was attended by Shri Bhavin Shah, CA as authorized by the assessee. During the course of hearing, Shri Bhavin Shah made reference to their earlier written submission dated 21.01.2022 and stated that the assessee were providing Manpower Supply services and the same were 100% covered under RCM. Hence, the service tax liability was not at their end. He accordingly requested to drop the SCN in view of their submission.

**DISCUSSION AND FINDINGS:**

20. I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defence reply submitted on 07.05.2021, the documents submitted by them vide their letters dated 21.01.2022 and 27.05.2022 and oral submission made during the course of hearing by authorized representative of the assessee.

21. On going through the SCN, I find that basically the essence of the case is that data of "Sales / Gross Receipts from Services (ITR)" / "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" (as per TDS Statement-Form were shared by the CBDT with CBIC for FY 2015-16 and 2016-17. The difference in taxable value was worked out after comparing the income declared





in Form 26AS/ITR vis-à-vis taxable value disclosed in ST-3 Returns. The difference of Rs. 14,16,60,121/- in value was observed for FY 2015-16 and 2016-17, therefore, it was alleged that the assessee had short paid the service tax of Rs. 2,08,98,239/- on such differential value, for providing the taxable service. Therefore, the subject SCN was issued. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs. 2,08,98,239/- on the differential taxable value of Rs. 14,16,60,121/- for the Financial Year 2015-16 and 2016-17 under proviso to section 73(1) of Finance Act, 1994 or not.

24. I find from the available records that the assessee is a proprietorship firm and Shri Neel Dilipkumar Patel is a proprietor of the firm and he runs his business in the name of M/s. Utility Labour Suppliers.

25. I find that that the assessee in their defence reply dated 07.05.2021 and during the course of hearing, has stated that they have provided Manpower Supply service to body corporate, hence, the service tax liability was on recipient of service under RCM. In support of their defence, they have submitted the following documents vide their letters dated 07.05.2021, 21.01.2022 and 27.05.2022.

- Agreement dated 08.05.2015 entered into by them with M/s. Intas Pharmaceuticals Limited.
- Agreement dated 20.06.2015 entered into by them with M/s. Troikaa Pharmaccuticals Limited.
- Work Order dated 21.10.2015 issued to the assessee by M/s. Lincoln Pharmaccuticals Ltd.
- Salcs Register, Form 26AS, ST-3 Returns, Balance Sheet/P&L Accounts, ITR for FY 2015-16 and 2016-17
- Soft copy of sample invoices.

26. I find that the SCN mentions of the sharing of data from ITR/26AS, however, it does not mention which data has been taken for computing the tax liability. On going through the data of 26AS for FY 2015-16 & 2016-17, I find that the same is found to be tallying exactly with the data of SCN. Hence, I find that the data of Form 26AS have been taken into consideration for computing the service tax liability on the assessee, and not the ITR. Hence, I proceed with the data i.e data of Form 26AS (amount paid or credited to the assessee by recipient of service) for deciding the matter.



27. I find from Form 26AS data that the noticee was paid/credited the amount of Rs. 7,01,55,702/- and Rs. 7,15,04,419/-, as disclosed by the tax deductor under section 194C of the Income Tax Act during FY 2015-16 and 2016-17 respectively. I find that Section 194C of the Income Tax Act deals with the tax deduction at source (TDS) and that is to be compulsorily deducted from any payments that have been made to any person who is a resident contractor or a subcontractor. Therefore, any amount paid/credited on which TDS has been deducted under Section 194C from such amount, is a contract income, which is taxable in nature. I find that the assessee has admittedly stated in their written submission dated 07.05.2021 and during the course of hearing held on 23.05.2022 that they had provided Manpower Supply service to Body Corporates, therefore, I find that there is no dispute about the provision of services by the assessee.

28. As per Form 26AS, the assessee has been paid /credited by the following recipients for receiving the service from the assessee during FY 2015-16 and 2016-17:-

FY 2015-16 Sr. No.	AS per Form 26AS Name of the TDS deductor	Amount paid /credited	TDS deducted under Section 194C
1	Amneal Pharmaceuticals P L	4176107	41758
2	Intas Phamaceuticals Limited	41091520	410919
3	Lincoln Pharmaceuticals Limited	5084245	51293
4	Lincoln Perental Limited	663045	6630
5	Troikaa Pharmaceuticals Limited	19140785	191408
	<b>Total</b>	<b>70155702</b>	<b>702008</b>

2016-17 Sr.No.	AS per Form 26AS Name of the TDS deductor	Amount paid /credited	TDS deducted under Section 194C
1	Amneal Pharmaceuticals P L	164502	1645
2	Intas Pharmaceuticals Limited	41234541	412346
3	Lincoln Pharmaceuticals Limited	6685749	68083
4	Lincoln Perental Limited	544779	5448
5	Sanghvi Aerospace Pvt Ltd	80087	81
6	Sotac Pharmaceuticals P L	61200	612
7	Saathi Innovations India Pvt Ltd	37777	3779
8	Troikaa Pharmaceuticals Limited	22695784	226959
	<b>Total</b>	<b>71504419</b>	<b>718953</b>



29. I find that the term "Supply of Manpower" has been defined under the Rule 2(1)(g) of Service Tax Rules, 1994, the same is re-produced as follows for case of ready reference.

*"supply of manpower" means supply of manpower, temporarily or otherwise, to another person to work under his superintendence or control.*

On going through the definition supra, the essence of manpower supply service is that the supplier provides manpower which is at the disposal and temporarily under effective control of the service recipient during the period of contract. Service provider's accountability is only to the extent and quality of manpower. Therefore, the superintendence or control over the manpower supplied is important factor to decide the nature of service.

30. Therefore, in order to ascertain the exact nature of service provide by the assessee, I would like to examine the documents viz. agreement and invoices furnished by the assessee in their defence. On going through the agreement dated 08.05.2015 entered into by the assessee with M/s. Intas Pharmaceuticals Limited, some of terms and conditions, which appear relevant for deciding the nature of service, are reproduced hereinunder, for ready reference.

**"GENERAL**

- 1) *This agreement will be in force for the period of Twelve months i.e. from 1<sup>st</sup> April 2015 to 31<sup>st</sup> March 2016 and during this period the terms and conditions agreed upon in this contract should not be altered or modified unless any specific mention is made in any clause.*

*During the tenure of contract you will undertake the following activities/ job. This will be mainly related to house keeping, loading/unloading, maintenance, packaging, material movement, material distribution and any activity/ job work in peripherals nature through unskilled labour. To perform this activities /jobs the engagement of such unskilled labourers may vary from time to time depending on workload. The contractor or his appointee supervisor will have to supervise/ monitor activities.*

- 2) *The contractor shall supply the required number of contract labourers of unskilled nature mainly for house keeping, material movement/ distribution, packing and any incidental /misc. work related thereof.*
- 3) .....

- 6) *The contractor shall ensure that all labours employed by him shall be efficient, honest and willing to understand nature of work. The contractor shall make them aware of all the rules and regulations observed in the company and ensure that these rules are strictly followed by labour supplied by him.*

.....



11) *The contractor shall ensure for quality linked productivity as per norms of the company”.*  
 .....

28) *In case of any loss or damage to the company an account of any act, omission negligence on then part of the contractor and/or his agents, representatives etc.. In handling of equipment/plants, the same shall be determined by the company and shall be acceptable by the contractor.*

**30.1** The asscssee has also submitted the copy of agreement dated 20.06.2015 entered into by them with M/s. Troikaa Pharmaceuticals Limited. The relevant extract of the agreement is reproduced for better understanding as under:

**“GENERAL**

1) *This agreement will be in force for the period of Twelve months i.e. from 20<sup>th</sup> June 2015 to 19<sup>th</sup> June 2016 and during this period the terms and conditions agreed upon in this contract should not be altered or modified unless any specific mention is made in any clause.*

*During the tenure of contract you will undertake the following activities/ job. This will be mainly related to Labelling, Packing, washing and any activity/jobs which require the engagement of such unskilled labour. To perform this activities /jobs the engagement of such unskilled labourers may vary from time to time depending on workload. The contractor or his appointee supervisor will have to supervise/ monitor activities*

2) *The contractor shall supply the required number of contract labours of unskilled nature of activities like labelling, packing, washing and other miscellaneous work related thereof.*  
 .....

6) *The contractor shall ensure that all labours employed by him are efficient, honest and willing to understand nature of work. The contractor shall make them aware of all the rules and regulations observed in company and ensure that these rules are strictly followed by labours supplied by him*  
 .....

11) *The contractor shall ensure for quality linked productivity as per norms of the company”*  
 .....

28) *In case of any loss or damage to the company an account of any act, omission negligence on then part of the contractor and/or his agents, representatives etc.. In handling of equipment/plants, the same shall be determined and recovered by the company from the contractor's bill of dues if any, including the bill which may become due and payable to the contractor in terms thereof from the company.*



**30.2** Work Order dated 21.10.2015 issued to the assessee by M/s. Lincoln Pharmaceutical Limited, reads as under:

*"Sub: To Gove Work- Order of Packing, House Keeping & Loading - Unloading work in Our Organisation."*

*"With reference to the above subject we want to inform you that in out Organization for the work of Loading and Unloading, packing work, House Keeping order is being issued to Utility Labour Suppliers, 3 Gopikunj Society, B/h. Sun N Step Club, Memnagar, Ahmedabad - 380052. This work order is issued to them for a period of 01.12.2015 to 30.11.2016....."*

**30.3.** From the above mentioned agreements and work order, it is apparent that the assessee was to provide labours for specific work i.e for loading, unloading, material movements, distribution of materials, packing, House Keeping, washing to be carried out at the premises of the recipient of service and the said work was to be supervised/monitored by the assessee or its representatives. Further, the assessee was responsible for conduct/ act of the labours and they were to ensure the strict compliance of company's rule and regulations by the labours deployed. Therefore, the assessee was having full control /superintendence over the labours deployed.

**30.4.** Scrutiny of some of the invoices issued to M/s. Troikaa Pharmaceuticals Limited, M/s. Sotac Pharmaceuticals Ltd, M/s. Saathi Eco Innovations P Ltd., M/s. Sanghavi Aerospace P Ltd, tendered by the assessee, reveals that the same were issued for charging Vials & Ampules Labelling & Packing, Manpower supply for labelling, packing for the particular month/period. It is also seen from some of the Invoices raised on M/s. Intas Pharmaceuticals Limited, M/s. Lincoln Pharmaceuticals Limited and Lincoln Parental Ltd that the same were for labour charge for providing labour work for the particular months or for reimbursement of salary paid to labours. Some invoices were issued by the asscssee for charging of reimbursement of transportation, bonus, etc. Therefore, it is seen that the labours were supplied for specific work assigned to them.

Some images of the relevant invoices are reproduced herewith for ease of ready reference:



LABOUR BILL Ph: 27479861

**UTILITY LABOUR SUPPLIERS**  
LABOUR CONTRACTOR

3, Gopikunj Soc., B/h Sun n Step Club, Memnagar, Ahmedabad-6\*

Amneal Life Sciences Pvt. Ltd Bill No 20  
 Plot 15, 16, 17 PHARMEZ NEZ, MEMNAGAR  
 S. BHOIRWARAY CHA. KANANAD, GHRV Date 01/05/2015

No.	Particulars	Amount	
		Rs	Paise
	Being Reimbursement of payments made to the contract employees deployed at your place for the month of APRIL 2015 (H.K. INJECTABLE)	177695	

Rupies Total 177695

For Utility Labour Suppliers  
 Proprietor

**UTILITY LABOUR SUPPLIERS**

3, Gopikunj Soc., B/h Sun n Step Club,  
 Memnagar, Ahmedabad-6\*  
 S. BHOIRWARAY CHA. KANANAD, GHRV  
 Date 01/05/2015

C/o Amneal Life Science Pvt Ltd

Bill No 20

Being reimbursement of the payments made to the contract employees deployed at your place for the month of APRIL 2015 (H.K. INJECTABLE)

CATEGORY	WAGE DAY	BASIC RATE	BASIC AMOUNT
Contract Labour	182	27.85	5068.70
<b>TOTAL</b>	<b>182</b>	<b>27.85</b>	<b>5068.70</b>

CATEGORY	SDP HRS	SDP RATE	SDP AMOUNT
Contract Labour	1116	16.64	18562.24
<b>TOTAL</b>	<b>1116</b>	<b>16.64</b>	<b>18562.24</b>

TOTAL	TH	PS	AMOUNT
Contract Labour	182	27.85	5068.70
PS	437	16.64	7271.68
Contract Labour	1116	16.64	18562.24
<b>Total</b>			<b>177695</b>

One Lac Seventy Seven Thousand Six Hundred Ninety Five only.



LABOUR BILL Ph - 27475861

**UTILITY LABOUR SUPPLIERS**  
LABOUR CONTRACTOR

3, Gopikunj Soc., B/h. Sun n Step Club, Memnagar, Ahmedabad-81

No.	TROIKAA PHARMACEUTICAL LTD	Bill No.	19
	THOL TA KADI DIS MILHANA	Date	01 05 2015

No	Particulars	Amount Rs	Pc
	Viols & Ampules Washing Labeling & Packing For Month of APRIL 2015	1230013	

RUP005      IN TWELVE LAC THIRTY THOUSAND THIRTEEN ONLY      Total      1230013  
For Utility Labour Suppliers  
Proprietor

TROIKAA PHARMACEUTICAL LTD.(THOL) PERSONAL

ANNEX # 2  
INVOICE BREAK UP

Name of Contractors :	Utility Labour Supplier
Bill No.:	
Bill Date:	04/05/2015
Bill Period:	01 APR-15 to 30 APR-15
A. Labour Charges	
A1. Basic	985.82
A2. DPA	0
B. Material Charges	0
C. Sub Total (A)	985.82
D. Service Charge (10.00%)	138.09
E. Provident Fund (12.00% of basic + 1.00% additional charge)	124.89
F. LSI if applicable (4.75% of basic)	N/A
G. Sub Total (B)	1230013
H. Service Tax (3.09%)	
I. Service Tax (Insurance Amt.)	1230013







LABOUR BILL

Ph. : 27479861

**UTILITY LABOUR SUPPLIERS**  
LABOUR CONTRACTOR

3, Gopikunj Soc., B/h. Sun n Step Club, Mominagar, Ahmedabad-61.

LINCOLN PHARMACEUTICALS LTD. 271

TO : 13, TRIMULI ESTATE KHATRA, TA. KALKA  
Dist. GANDINAGAR-382721 Date: 31-03-16

No.	Particulars	Amount Rs.	P₹
	Being Reimbursement to be Made Our Salary Slip & PF Bill Due For The Month of MAR-2016 As Per Details Given: BASIC	122376	
	HRA+CONVE	95809	
			218185
	PF	16149	
	TOTAL SALARY		234534

RUJWOLAC THIRTY FOUR THOUSAND FIVE HUNDRED THIRTY FOUR ONLY. Total 234534



LINCOLN PHARMACEUTICALS LTD.

MONTH-MAR-16	
UTILITY LABOUR SUPPLIERS	BILL DETAIL
BASIC	122376
HRA+CONV	95809
TOTAL	218185
PF	14685
PF ADMINCHARGE	1664
TOTAL SALARY	234534



LABOUR BILL Ph: 27479551  
**UTILITY LABOUR SUPPLIERS**  
 LABOUR CONTRACTOR

3. Gopikunj Soc., B/h. Sun n Step Club, Memnagar, Ahmedabad-61

LINCOLN PARENTERAL LTD. 272  
 11 TRIMULI ESTATE PHATMA (A PALD) 31-03-16

No	Particulars	Amount
		Rs. Ps.
	Being Amountment To Be Made Our Salary Slip & P.F. Billng Due For The Month of MAR-2016 As Per Details Given (10ASCI)	33174
	H.R.A. + CONVE	18904
		52078
	P.F. 15.10%	4432
	<b>TOTAL SALARY</b>	<b>56510</b>

Rupees FIFTY SIX THOUSAND FIVE HUNDRED TEN ONLY. Total 56510

For Director  
 ULS  
 Director

LABOUR BILL Ph: 27479864  
**UTILITY LABOUR SUPPLIERS**  
 LABOUR CONTRACTOR

3. Gopikunj Soc., B/h. Sun n Step Club, Memnagar, Ahmedabad-61.

SOTAC PHARMACEUTICAL PVT. LTD. 299  
 PROIND PR-70 ZETEMARAL INDUSTRIAL  
 ESTATE OPP. TEVA PHARMA SANAND GIDC II 28-02-17  
 Far-SANAND DIST-AHMEDABAD

No	Particulars	Amount
		Rs. Ps.
	Viols & Ampules Washing Labelling & Packing For Month of FEB-2017	11991

ELEVEN THOUSAND NINE HUNDRED NINETY ONE ONLY. Total 11991





LABOUR BILL Ph. : 27479861

## UTILITY LABOUR SUPPLIERS

LABOUR CONTRACTOR

1, Gopabandh Soc. B/H. Sura. Stop Club, Memnagar, Ahmedabad-61

TROIKAA PHARMACEUTICAL LTD. 270  
 SURVEY NO. 2015, 2022, 2023 SANAND  
 VIRNGAM HIGH WAY VIROCHANNAGAR TAL. 31-01-17  
 SATIAND DIST AHMEDABAD

No	Particulars	Amount	
		Rs.	Ps.
	MANPOWER SUPPLY FOR LABELLING & PACKING FOR Month of JAN-2017	429402	

Rup. FOUR LAC TWENTY NINE THOUSAND FOUR HUNDRED TWO ONLY. Total 429402

Proprietor

TROIKAA PHARMACEUTICAL LTD.(BODAKDEV) PERSONAL DEPARTMENT

VIROCHANNAGAR

**ANNEX # 2**  
**INVOICE BREAK UP**

Name of Contractors :	Utility Labour Suppliers
Bill No.:	270
Bill Date:	31-01-17
Bill Period:	01 JAN-17 to 31 JAN-17
<b>A. Labour Charges</b>	
A1. Basic	285049
A2. DA	0
B. Production Bonus/Incentive	26405
B1. TAXATION ALLOWENCE	29565
B1. ALLOWNCE	0
C. Sub Total (A)	341019
D. Service Charge (10.00%)	34102
F. Provident Fund(12.00% of basic + 1.36% additional charge)	38053
E. Labour Welfare Fund (44*12)	0
F. ESI, if applicable(4.75% of basic + HRA)	16198
G. Sub Total (B)	429402
H. Service Tax (3.09%)	0
I. Net Total (Invoice Amt.)	429402



**30.5** Further, the above work order/ agreements as mentioned above, do not mention anything about the entities by whom the service tax liability was to be discharged in respect of service provided by the assessee, except in case of M/s. Troika Pharmaceutical Ltd, annexure-A attached to Agreement entered with them by the assessee, the payment of service tax @ 3.09% was to be made to the assessee. I find that no such rate of service tax was in existence at the relevant time. I find that, after 01.04.2015, as per Notification No, 30/2012-ST dt. 20.06.2012 as amended by Notification No. 07/2015 dated 01.03.2015, in case of provision of Manpower Supply Service by any individual/ partnership firm /HUF to the body corporate, the body corporate being the recipient of service is liable to pay 100% of service tax in stead of 75%. It is also discerned from the sample invoices issued by the assessee that they do not mention that the service tax was to be paid by the recipient of service.

**30.6** From the definition of Supply of Manpower provided under Rule 2(1)(g) of Service Tax Rules, 1994 as discussed in forgoing para, I am of the view that there must be Supply of Manpower and Manpower supplied has to be under the control /superintendence of recipient of service. If in case of provision of service, if these two criteria are satisfied, then only the services are qualified to be manpower service. Accountability of service provider is limited to supply of manpower only. The essence of manpower supply service is that the supplier provides manpower which is at the disposal and temporarily under effective control of the service recipient during the period of contract. Service provider's accountability is only to the extent and quality of manpower. Therefore, the superintendence or control over the manpower supplied is important factor to decide the nature of service. I find that the board vide Circular No. Circular No.190/9/2015-Service Tax dated 15.12.2015, has clarified the definition of manpower service, the relevant para 2 is reproduced as under for better understating:

*The matter has been examined. The nature of manpower supply service is quite distinct from the service of job work. The essential characteristics of manpower supply service are that the supplier provides manpower which is at the disposal and temporarily under effective control of the service recipient during the period of contract. Service providers accountability is only to the extent and quality of manpower. Deployment of manpower normally rests with the service recipient. The value of service has a direct correlation to manpower deployed, i.e., manpower deployed multiplied by the rate. In other words, manpower supplier will charge for supply of manpower even if manpower remains idle."*

**30.7.** From the legal position, documents furnished by the assessee, it is apparent that the assessee had supplied manpower for specific job and assessee

was responsible for the work to be carried out by the manpower supplied by them. The supervision/ monitoring of work was also to be done by the assessee. The assessee was also responsible for behaviour of the manpower, compliance of law and regulation of service recipient company, quality of productivity, any damages caused by the manpower supplied etc. Therefore, the assessee was having full control /superintendence over the labours/manpower deployed. I find that billing in terms of number of manpower or man days of different persons required/utilised for performing the services. It is a common practice in business to bill the clients in terms of number of man hours of the personnel required and at different levels required. Merely because the total amount has been billed using the number of man hours/man days as a measure, it does not become a manpower supply service. The real test of determining the nature of service is to go through the agreement to understand what is the deliverable which the service provider has to deliver to the service recipient. In this case, this deliverable service is providing manpower for carrying out various activities under supervision of the assessee. In the instant case, the supervision and control remained with the assessee, hence, the criteria "to work under his superintendence or control" provided in the meaning /definition of "Supply of Manpower" is not satisfied. Therefore, I find that the service provided by the assessee do not qualify to be Manpower Supply service. Therefore, there is no question of resting of service tax liability upon the recipient of service on provision of service by the assessee. I find that the arguments put forth by the assessee is not acceptable in terms of legal provision as discussed hereinabove. I also find the service provided by the assessee is not covered under the list of service provided under the negative list of services under Section 66D of the Finance Act, 1994 or cover under any exemption notification. Hence, the service provided by the assessee is taxable service in terms of Section 65B(51) and service tax is leviable on provision of service by the assessee during FY 2015-16 and 2016-17, under Section 66B of the Finance Act, 1994. I therefore hold that the assessee is liable to pay service tax of Rs. 2,08,98,239/- as demanded under the subject SCN, on the differential taxable value of Rs. 14,16,60,121/- for the Financial Year 2015-16 and 2016-17. Therefore, I hold that the same is required to be recovered from the assessee under the provisions of Section 73(1) of the Finance Act, 1994.

I also find that Section 75 of Finance Act, 1994 mandates that any person who is liable to pay service tax, shall, in addition to the tax, be liable to pay interest at the appropriate rate for the period by which crediting of tax or

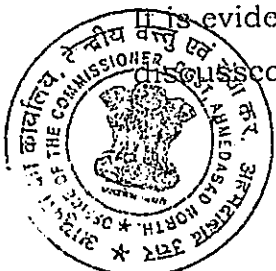


part thereof is delayed. I thus hold that the assessee is also liable to pay the interest on the demand of service Tax of Rs. 2,08,98,239/-.

**32.** Based on above facts and circumstances, discussion and documents available on records, I hold that assessee is liable to pay the service tax amounting to Rs 2,08,98,239/- for the period from FY 2015-16 to 2016-17. Therefore, I find that the assessee has contravened the provisions of Section 68 and 66B of the Finance Act, 1994 read with Rules 2 and 6 of the Service Tax Rules 1994, in as much as they have failed to pay service tax to the tune of Rs. 2,08,98,239/- though they were liable to pay the same; they have also contravened the provision of Section 70 of Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994 in as much as they have failed to assess their correct service tax liability and have failed to file correct ST-3 Returns for the period from April 2015 to March 2017.

**33.** From the facts and discussion aforementioned, I find that assessee has failed to assess and discharge their service tax liability for the period from FY 2015-16 to FY 2016-17. They have failed to disclose their actual taxable income by not declaring taxable value of service provided by them, in their service tax returns filed by them and not paying legitimate service tax due to the govt. account, though they were having income which was liable to service tax. These acts of non payment of service tax, non filing of correct service tax returns, suppressing the material facts from the department were done with an intent to evade the payment of service tax. The government has from the very beginning placed full trust on the assessee, accordingly measures like self assessment etc. based on mutual trust and confidence have been put in place. Further, the assessee are not required to maintain any statutory or separate records under the Excise /service tax law as considerable amount of trust is placed on the assessee and private records maintained by them for normal business purposes are accepted for purpose of service tax law. Moreover, returns are also filed online without any supporting documents. All these operate on the basic and fundamental premise of honesty of the assessee; therefore, the governing statutory provisions create an absolute liability on the assessee when any provisions is contravened or there is breach of trust placed on them. Such contravention on the part of the assessee tantamounts to willful misstatement and suppression of facts with an intent to evade the payment of the duty/ tax.

It is evident that such fact of contravention and non payment of service tax, as discussed earlier, on the part of the assessee only came to the notice of the



department when the inquiry was initiated by the department, consequent upon the data shared by the CBDT. In the case of *Mahavir Plastics versus CCE Mumbai, 2010 (255) ELT 241*, it has been held that if facts are gathered by department in subsequent investigation extended period can be invoked. In 2009 (23) STT 275, in case of *Lalit Enterprises v CST Chennai*, it is held that extended period can be invoked when department comes to know of service charges received by appellant on verification of his accounts. Therefore, I find that all essential ingredients exist in this case to invoke the extended period under the proviso to Section 73(1) of Finance Act, 1994. Hence, by invoking the extended period of five years, I hold that the assessee is liable to pay Service Tax of Rs. 2,08,98,239/- along with applicable interest under Section 75 of the Finance Act, 1994. And for the same reasons, the assessee has rendered themselves liable for penal action under the provisions of Section 78 of the Finance Act, 1994.

34. As regards proposal of levy of late fees in terms of Rule 7C of Service Tax Rules 1994, I find from the service tax returns filed by the assessee during the period from FY 2015-16 and 2016-17, they had file Nil returns with the department and the same were filed withing the due date of filing the returns. Hence, I find that no late fees is payable by the assessee.

35. As regards, the proposal for imposition of penalty under Section 77(2) of the Finance Act, 1994, I find that the assessee had failed to assess their service tax liability and had failed to file correct service tax returns as required under Section 70 of the Finance Act, 1994 read with Rule 7 of Service Tax Rules, 1994, as discussed at length hereinabove, thus, they have rendered themselves liable to penal action under 77(2) of the Finance Act, 1994.

In view of the above discussion and findings, I pass the following order:

**ORDER**

(i) I hereby confirm the demand of service tax of Rs. 2,08,98,239 (Rupees Two Crore Eight Lakh Ninety Eight Thousand Two Hundred Thirty Nine Only), short/ not paid by the assessee for FY 2015-16 and 2016-17 and order to recover the same from the assessee under proviso to Sub-section (1) of Section 73 of Finance Act, 1994.

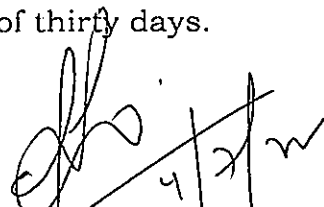
(ii) I order to charge the Interest at the appropriate rate on the demand as above (i) to recover the same from the assessee under Section 75 of the Finance Act, 1994;





- (iii) I impose penalty of Rs. 2,08,98,239 (Rupees Two Crore Eight Lakh Ninety Eight Thousand Two Hundred Thirty Nine Only), on the assessee under the provision of Section 78 of the Finance Act, 1994.
- (iv) I order not to levy late fees under the provision of Rule 7C of Service Tax Rules 1994 from the assessee as there is no delay in filing of ST-3 returns by the assessee.
- (v) I impose penalty of Rs. 10,000/- on the assessee under the provision of Section 77(2) of the Finance Act, 1994, for failure to assess their correct Service Tax Liability and failed to file correct Service Tax Returns, as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

However, in view of clause (ii) of the second proviso to Section 78 (1), if the amount of Service Tax confirmed and interest thereon is paid within period of thirty days from the date of receipt of this Order, the penalty shall be twenty five percent of the said amount, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days.

  
(Upendra Singh Yadav)  
Commissioner,  
Central Excise & CGST,  
Ahmedabad North.

By Regd. Post AD./Hand Delivery  
F.No. STC/15-114/OA/2021

Date: 04.07.2022.

To  
M/s. Utility Labour Suppliers,  
3 Gopikunj Society,  
Sun N Step Club,  
Memnagar,  
Ahmedabad - 380052

Copy to:

- 1 The Principal Chief Commissioner of CGST & C. Ex., Ahmedabad Zone.
- 2 The Deputy/Assistant Commissioner, CGST & C.Ex., Division-VII, Ahmedabad North.
- 3 The Superintendent, Range-II Division-VII, Ahmedabad North.
- 4 The Superintendent (System), CGST, Ahmedabad North for uploading on website.
- 5 Guard File.

