



# Virtual Refresher Course by WIRC (ICAI)

Applicability of GST to NGOs

27 May 2021





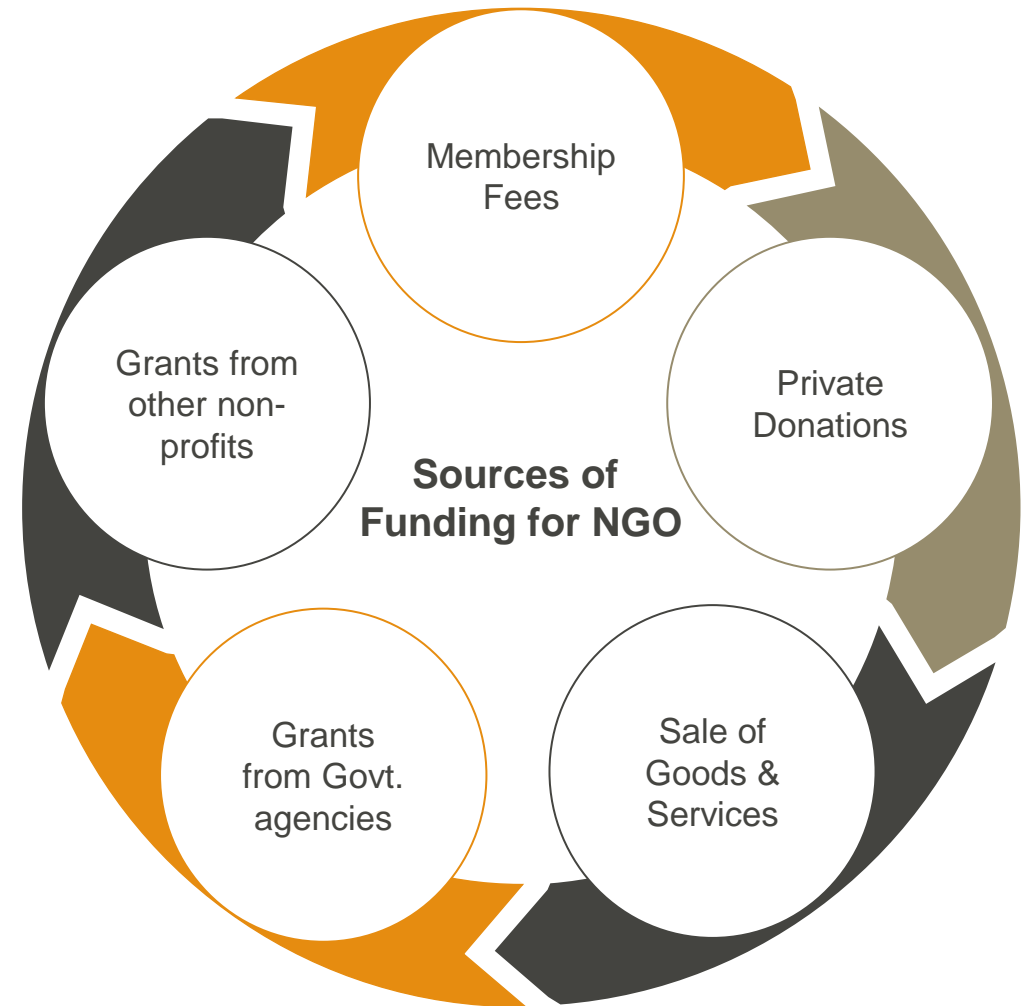
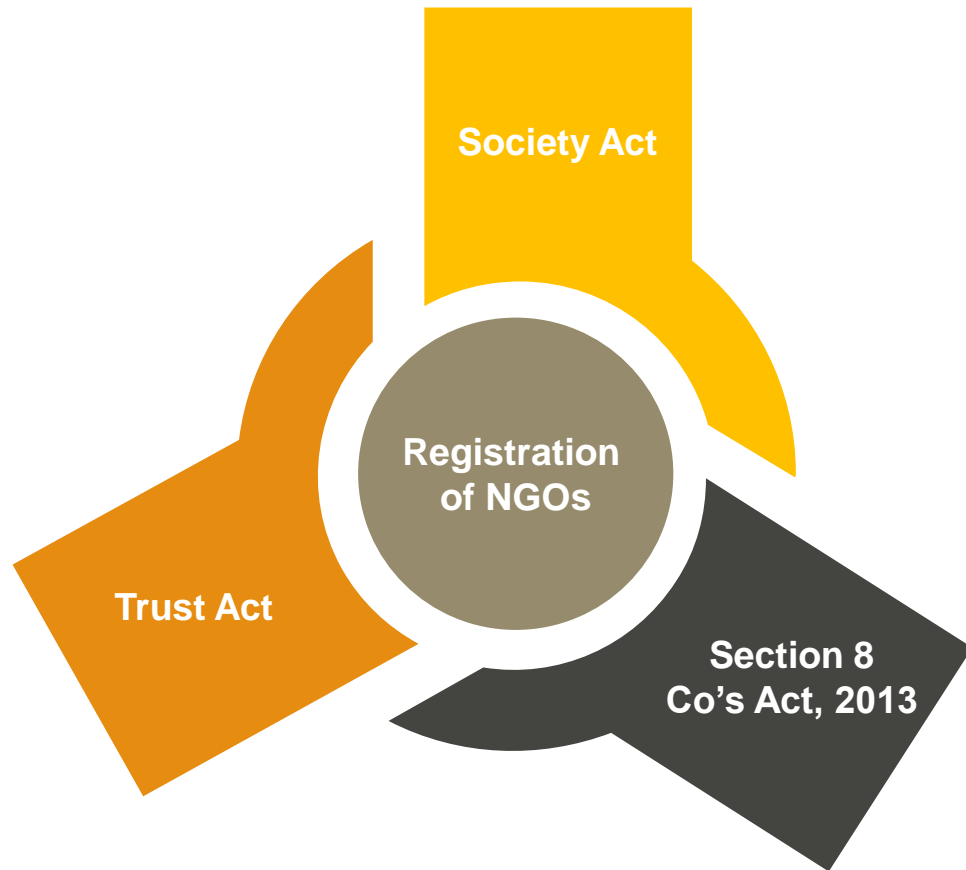
# Basics on NGOs

# Basics on NGOs

- A Non-Governmental Organization ('NGO') is a **non-profit group** that functions independent of any government
- NGOs are like **civil societies** created for developing society, enhancing communities and promoting citizen participation **at national and international levels to-**
  - Address social or political goals;
  - Discuss humanitarian issues; and
  - For addressing environmental concerns
- World Bank identifies 2 broad groups of NGOs:
  - **Operational NGOs:** It focus on the design and implementation of development projects
  - **Advocacy NGOs:** It defend or promote a specific cause and seek to influence public policy



# Basics on NGOs





# Relevant provisions of GST

# Whether activities of NGOs would qualify as supply?

## Section 7 of the CGST Act

### 7. Scope of supply.

(1) For the purposes of this Act, the expression "supply" includes,-

(a) **all forms of supply** of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made **for a consideration by a person in the course or furtherance of business**;

(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice versa, for cash, deferred payment of other valuable consideration **(yet to be notified)**;

(b) import of services for a consideration whether or not in the course or furtherance of business; and

(c) the activities specified in Schedule I, made or agreed to be made without a consideration;

(d) omitted.

(1A) where certain activities or transactions constitute a supply in

accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.

(2) Notwithstanding anything contained in sub-section (1),-

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,

shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of sub-sections (1), (1A) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as,-

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods.

# Whether amounts earned by NGOs is consideration?

## Section 2(31) of the CGST Act

**(31)** "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

# Whether NGOs are construed as person?

## Section 2(84) of the CGST Act

(84) "person" includes,-

(a) an individual;

(b) a Hindu Undivided Family;

**(c) a company;**

(d) a firm;

(e) a Limited Liability Partnership;

**(f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;**

(g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013.);

(h) any body corporate incorporated by or under the laws of a country outside India;

(i) a co-operative society registered under any law relating to co-operative societies;

(j) a local authority;

(k) Central Government or a State Government;

**(l) society as defined under the Societies Registration Act, 1860 (21 of 1860.);**

**(m) trust;** and

(n) every artificial juridical person, not falling within any of the above



# Whether NGOs is engaged in business?

## Section 2(17) of the CGST Act

(17) "**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 incidental or ancillary to sub-clause (a)**;

(c) **any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction**;

(d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;

(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;

(f) admission, for a consideration, of persons to any premises;

(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

(h) activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and

(i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities

# Relevant exemptions in case of Supply of Services

Notification No 12/2017-Central Tax (Rate) dated 28 June 2017

Sr No	Description of Services
1	Services by an entity registered under section 12AA of the Income-tax Act, 1961 (43 of 1961) <b>by way of charitable activities</b>

The **definition of 'charitable activities'** is as under:

(r) "charitable activities" means activities relating to -

(i) public health by way of ,-

(A) care or counseling of

(I) terminally ill persons or persons with severe physical or mental disability,

(II) persons afflicted with HIV or AIDS

(III) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol

(B) public awareness of preventive health, family planning or prevention of HIV infection

(ii) advancement of religion, spirituality or yoga

(iii) advancement of educational programmes or skill development relating to,-

(A) abandoned, orphaned or homeless children;

(B) physically or mentally abused and traumatized persons;

(C) prisoners; or

(D) persons over the age of 65 years residing in a rural area;

(iv) preservation of environment including watershed, forests and wildlife

# Relevant exemptions in case of Supply of Services

Notification No 12/2017-Central Tax (Rate) dated 28 June 2017

Sr No	Description of Services
13	<p>Services by a person by way of-</p> <p>(a) <b>conduct of any religious ceremony;</b></p> <p>(b) <b>renting of precincts</b> of a religious place meant for general public, owned or managed by an entity registered as a charitable or religious trust under section 12AA of the Income-tax Act, 1961 (hereinafter referred to as the Income-tax Act) or a trust or an institution registered under sub clause (v) of clause (23C) of section 10 of the Income-tax Act or a body or an authority covered under clause (23BBA) of section 10 of the said Income-tax Act: Provided that <b>nothing</b> contained in entry (b) <b>of this exemption shall apply to,-</b></p> <p>(i) renting <b>of rooms</b> where charges are <b>one thousand rupees or more per day;</b></p> <p>(ii) renting of <b>premises</b>, community halls, kalyanmandapam or open area, and the like where charges are <b>ten thousand rupees or more per day;</b></p> <p>(iii) renting of <b>shops</b> or other spaces for business or commerce where charges are <b>ten thousand rupees or more per month.</b></p>
14	<p>Services by a <b>hotel, inn, guest house, club or campsite</b>, by whatever name called, <b>for residential or lodging purposes</b>, having value of supply of a unit of accommodation <b>below or equal to one thousand rupees per day or equivalent.</b></p>
80	<p>Services by way of training or coaching in recreational activities relating to-</p> <p>(a) arts or culture, or</p> <p>(b) sports by charitable entities registered under section 12AA of the Income-tax Act.</p>

# Relevant exemptions in case of Supply of Goods

Notification No 2/2017-Central Tax (Rate) dated 28 June 2017

Sr No	Description of Goods
98	Prasadam supplied by religious places like temples, mosques, churches, gurudwaras, dargahs, etc.





## Various Rulings under GST in relation to NGOs

# Whether sale of books, audio CDs, etc. by religious trust is considered as supply...

## Facts

- ❑ The Appellant is a public charitable and religious trust engaged in advancement of the religious and spiritual teachings of Paramkrupalu Shimad Rajchandra and spreading knowledge of Jain Religion
- ❑ It sells various spiritual products such as Books (*which give in-depth study of the teachings of Gurudev*) and Audio CDs, DVDs, etc. (*which are recorded pravachan, satsang, etc. for those who cannot be personally present at the events*) at cost or less than cost

## Questions

- ❑ Whether the activities carried out by them would fall under the definition of business
- ❑ Whether they are liable for registration
- ❑ Whether the sale of such products which are incidental and ancillary to main charitable object can be said to be business

## Contentions by the Appellant

- ❑ Main object is of advancement of religious and spiritual teachings and is not engaged in any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity
- ❑ Once the main object of the Appellant cannot be considered as business, the ancillary or incidental objects also cannot be considered as business
- ❑ Relies on the judgement of **SC in case of Sai Publication Fund [(2002) 14 SCC 704 (SC)]** which held that where the main and dominant activity of the assessee trust in that case was to spread message of Sai Baba, then bringing out publications and sale thereof by the assessee Trust to its devotees at cost price did not amount to business
- ❑ Does not get any pecuniary benefit from various activities carried out (*i.e. no motive to earn profit and profit earned, if any, is spent on the advancement of its main object*)
- ❑ The products are sold at cost or less than cost

# Whether sale of books, audio CDs, etc. by religious trust is considered as supply

## Ruling by AAAR

- ❑ The intention of the Legislature is to **tax all the activities** of supply of goods and/ or services by charitable trust, **except those specifically exempted** (*i.e. charitable institutions qua their activities do not lend themselves to any specific concession or exemption*)
- ❑ The very fact that certain services have been carved out and given out a special treatment makes it clear that all trade and commerce transaction of selling books, statues, CDs and DVDs, etc., done commercially for consideration come within the broad ambit of 'business'
- ❑ **Distinguished SC judgement in case of Sai Publication Fund:**
  - Definition of 'business' is **different and wider** than BST Act
  - The rule of '**harmonious interpretation**' says that every Statute has been made for a purpose and specific intent as per law and it should be read as a whole and interpreted accordingly

- The intent is to consider 'charitable/religious trusts' as taxable persons effecting taxable supply of goods/services, with specific exemptions in some areas

The activity of selling books, statues, CDs and DVDs, etc., for consideration (*even at cost or less than cost*) is construed as a commercial activity, which falls under the broad ambit of 'business' and thus, being supply liable to GST. Thereby, requirement of obtaining registration under GST.

**Maharashtra AAAR in case of Shrimad Rajchandra Adhyatmik Satsang Sadhana Kendra [2019 (20) GSTL 779]**

# Whether sale of medicines at cost by charitable trust is considered as supply

## Facts

- ❑ The Appellant is a charitable trust and are running a medical store where medicines are given at a lower rate and the motive of the trust is not profit

## Questions

- ❑ Whether they are required to obtain registration for medical store
- ❑ Whether medical store providing medicines at a lower rate amounts to supply

## Contentions by the Appellant

- ❑ Relied on the judgements of **Gujarat HC in case of Saurashtra Kidney Institute [Tax Appeal No. 704/2013]** and **Bhailal Amin General Hospital [Tax Appeal No. 1673/2009]** which held that the activity of purchasing, selling and supplying medicines was to achieve the object of the Trust and was not a business activity
- ❑ Does not get any pecuniary benefit, as they provide such facility on cost to cost basis

## Ruling by AAR

- ❑ **Distinguished Gujarat HC judgements:**
  - The charitable, religious or educational institution were excluded from the definition of dealer under the Gujarat Sales Tax Act; whereas no such exclusion clause is there under the GST Act
  - Trust has been defined as a person in the GST Act
- ❑ Medicines are covered under HSN Chapter 30
- ❑ Providing medicines from the medical store at lower rate justifies less pecuniary benefit, but is still covered under the definition of 'business'

The activity of selling medicines for a consideration (*even at cost*) is construed as a commercial activity, which falls under the broad ambit of 'business' and thus, being supply liable to GST. Thereby, requirement of obtaining registration under GST.

**Gujarat AAR in case of Nagri Eye Research Foundation [2020 (38) GSTL 248]**



# Whether charitable trust established for disaster prevention, mitigation, etc. required to obtain registration

## Facts

- The Appellant is a charitable trust established for the purposes of prevention, mitigation and management of any disaster and all the other objectives are ancillary to such purpose

## Questions

- Whether they are liable for registration

## Contentions by the Appellant

- The Appellant is only a charitable trust engaged in training/research relating to disaster prevention, mitigation and management; and is not engaged in any business or any commercial or trading activities
- Relies on the judgement of **SC in case of Sai Publication Fund [(2002) 14 SCC 704 (SC)]** which held that where the main and dominant activity of the assessee trust in that case was to spread message of Sai Baba, then bringing out publications and sale thereof by the assessee Trust to its devotees at cost price did not amount to business
- Also relied on various other HC judgements stating that the Appellant is not liable to obtain registration

- Without prejudice to the above, the Appellant submitted that even if the activities qualify as supply, the services by way of charitable activities which are fully exempt from GST and thus, not required to obtain registration
- The Appellant also highlighted another exemption entry pertaining to protection of environment as a function entrusted to Panchayat (under Article 243G) and Municipality (under Article 243W)

## Ruling by AAR

- The activities of the Appellant relating to disaster prevention, disaster mitigation and disaster management are activities relating to “preservation of environment”, thus, the activities are considered as charitable activities
- The said activities are exempt from GST as per the Entry 1 in Notification No. 12/2017-Central Tax (Rate), dated 28 June 2017
- Consequently, the Appellant is not required to obtain registration in respect of charitable activities relating to preservation of environment which attracts nil rate of GST

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## Questions

- Whether they are liable for registration

The activities of disaster prevention, disaster mitigation and disaster management are activities relating to “preservation of environment”, and thus, the activities are considered as charitable activities. Thereby, the Appellant is not required to obtain registration in respect of charitable activities relating to preservation of environment which attracts nil rate of GST.

## Gujarat AAR in case of All India Disaster Mitigation Institute [2020 (36) GSTL 104]

- Relies on the judgement of SC in case of Sai Publication Fund [(2002) 14 SCC 704 (SC)] which held that where the main and dominant activity of the assessee trust in that case was to spread message of Sai Baba, then bringing out publications and sale thereof by the assessee Trust to its devotees at cost price did not amount to business
- Also relied on various other HC judgements stating that the Appellant is not liable to obtain registration
- Without prejudice to the above, the Appellant submitted that even if the activities qualify as supply, the services by way of charitable activities which are fully exempt from GST and thus, not required to obtain registration
- The Appellant also highlighted another exemption entry pertaining to protection of environment as a function entrusted to Panchayat (under Article 243G) and Municipality (under Article 243Q)
- The said activities are exempt from GST as per the Entry 1 in Notification No. 12/2017-Central Tax (Rate), dated 28 June 2017
- Consequently, the Appellant is not required to obtain registration in respect of charitable activities relating to preservation of environment which attracts nil rate of GST

# Whether receipt of Donations/ Grants towards preservation of environment amounts to supply liable to GST

## Facts

- The Appellant is a charitable trust engaged in providing following services
  - Sanitation Capacity Building through training, piloting and demonstration, awareness raising, etc.
  - Open Dissemination of knowledge in sustainable sanitation and water management
  - Providing sustainable solutions at community level
  - Survey, research and analysis in the field of natural wastewater treatment technologies
- In order to render services, amounts are received from various companies and persons in form of Donations/ Grants

## Questions

- Whether any Donations/ Grants received towards performing specific services towards preservation of environment amounts to provision of service and liable to GST

## Contentions by the Appellant

- The Appellant submitted that such activities of protection and

conservation of environment falls under 'preservation of environment' and thus, in the nature of charitable activities which squarely gets covered in the exemption notification

## Ruling by AAR

- The dictionary meaning of 'preservation' is to keep up; to maintain; to keep safe from injury. Thus, preservation of environment would cover both protection of environment (*keeping it safe from destruction*) and conservation of environment (*optimal use of natural resources*) and allowing them to regenerate or sustainable consumption of natural resources i.e. meeting the needs of present generation without compromising the needs of the future generations
- In light of the above, the activities are considered as charitable activities and receipts of Donations/ Grants for the same are exempt from GST as per the Entry 1 in Notification No. 12/2017-Central Tax (Rate), dated 28 June 2017
- Consequently, the Appellant is not required to obtain registration in respect of charitable activities relating to preservation of environment which attracts nil rate of GST

# Whether receipt of Donations/ Grants towards preservation of environment amounts to supply liable to GST

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  - Sanitation Capacity Building through training, piloting and demonstration, awareness raising, etc.
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conservation of environment falls under 'preservation of environment' and thus, in the nature of charitable activities which squarely gets covered in the exemption notification

## Ruling by AAR

- The dictionary meaning of 'preservation' is to keep up; to maintain; to keep safe from injury. Thus, preservation of environment would cover both protection of environment

The activities of protection and conservation of environment are activities relating to "preservation of environment", and thus, the activities are considered as charitable activities. Thereby, the Appellant is not required to obtain registration in respect of charitable activities relating to preservation of environment which attracts nil rate of GST.

## Maharashtra AAR in case of Ecosan Services Foundation [2019 (23) GSTL 310]

## Questions

- Whether any Donations/ Grants received towards performing specific services towards preservation of environment amounts to provision of service and liable to GST

## Contentions by the Appellant

- The Appellant submitted that such activities of protection and

in light of the above, the activities are considered as charitable activities and receipts of Donations/ Grants for the same are exempt from GST as per the Entry 1 in Notification No. 12/2017-Central Tax (Rate), dated 28 June 2017

- Consequently, the Appellant is not required to obtain registration in respect of charitable activities relating to preservation of environment which attracts nil rate of GST



# Whether the conduct of marathon events through which donations are raised for charity is exempt under GST

## Facts

- ❑ The Appellant is a trust engaged in conducting public charitable activities such as Health Care, Rural Development, Women Empowerment, etc.
- ❑ The principal objects of the trust is to organize events like Marathon, Blood Donation Camp, Organ Donation Camp, Eye Donation Camp, Health Awareness Camp, etc., and utilize the funds raised from such events for Charitable Cause like funding to NGOs, Hospitals, Trusts and other Charitable Organizations
- ❑ Apart from the above the Appellant also conducts camps, seminars, meetings, publicity and prevention for terminal illness like cancer, AIDS, etc., and they also promote, administer, support, maintain and/or grant aid to any NGO's institutions or organizations having similar objectives like the Applicant in India
- ❑ The Trust had organized and conducted every year a marathon event named Dream Runners Half Marathon since 2012 for which they collected donations from the participating runners and other corporates
- ❑ The amount so received is utilized for the conduct of the event

that includes permit and approval fees, fees paid to the Government authorities, expenses for the conduct of the event that includes prize money for the winners and the balance left is paid as donations to the NGOs supporting the cause or directly to the beneficiaries

## Questions

- ❑ Whether the conduct of marathon events through which donations are raised for charity is exempt under GST
- ❑ Whether trust approved under Section 12AA automatically becomes a charitable activity which is exempt under GST
- ❑ Whether they are liable for registration

## Contentions by the Appellant

- ❑ The Appellant has stated that they conduct event always for a public cause and for the last 3 editions, it was for prosthetic legs (*i.e. the net proceeds of the event were donated to Freedom Trust, an NGO engaged in providing prosthetic limbs to the less privileged public*)

# Whether the conduct of marathon events through which donations are raised for charity is exempt under GST

- ❑ The cause for the support of providing prosthetic legs is covered under the definition of charitable activities (*as public health by way of care or counselling of terminally ill persons or persons with severe physical or mental disability*); thereby exempt from the levy of GST (*as was the case in Service Tax regime*)

## Ruling by AAR

- ❑ The Appellant is conducting Marathon and the receipts of the event are utilized for conduct of the event and the balance left is donated to the cause for the support of providing prosthetic legs
- ❑ Therefore, the money collected from the participants is a consideration towards the supply of service of organizing and conducting the marathon event for the participants and the same is liable to GST
- ❑ This activity of conducting Marathon events by the Appellant does not fall under the definition for charitable activities

The money collected from the participants is a consideration towards the supply of service of organizing and conducting the marathon for the participant's conduct of marathon event and thus, being supply liable to GST. Thereby, requirement of obtaining registration under GST.

**Tamil Nadu AAR in case of Dream Runners Foundation Limited [2019 (23) GSTL 133]**

# Whether supply of various goods and services by a charitable trust is taxable or exempt under GST...

## Facts

- The Appellant is a religious and charitable trust constituted under the M M Hills Development Authority Act, 2014
- It is engaged in rendering the following:
  - Seva Services, for which they collect Seva and Utsava Fees;
  - Special Darshan, for which they collect Special Darshan Fees;
  - Sells Laddoos, Kallu Sakkare, Thirtha Prasada, Cloth Bags, and other articles;
  - Accommodation services with regards to 16 Cottages and 242 rooms, for a range of INR 130 to INR 750 per day;
  - Transfer of right to provide services (such as right to collect vehicle entry fees, collect service charges, charges for pooja, etc.);
  - Leasing out 100 commercial shops;
  - Renting out Kalyana Mandapam;
  - Access to temple, for which they collect vehicle entry fee;

and

- Floating tenders for transferring right to provide services in future

## Questions

- Whether such supplies are liable to GST

## Ruling by AAR

- Seva Services and Special Darshan Services
  - It can be seen that such services are not in the course or furtherance of business and hence, the same cannot be covered under the scope of supply
  - The money received should be in relation to the supply of goods and/ or services, since the same does not fall under supply, the money received is not a consideration
  - Further, as per Entry No 13 of Notification No. 12/2017-Central Tax (Rate) services by a person by way of conduct of any religious ceremony is also exempt from tax
  - Thus, the seva charges and the special darshan charges collected is not liable to GST

# Whether supply of various goods and services by a charitable trust is taxable or exempt under GST...

- Sale of Laddoos, Kallu Sakkare, Thirtha Prasada, Cloth Bags, and other articles
  - As per Entry No 98 of Notification No. 2/2017-Central Tax (Rate) goods falling under Prasadam supplied by religious places like temples, mosques, churches, gurudwaras, dargahs, etc., is exempt from tax
  - However, for items other than edible items falling under HSN 2106 (like cloth bags, and other articles), then such goods are liable to tax at the appropriate rates
- Accommodation services with regards to 16 Cottages and 242 rooms
  - As per Entry No 14 of Notification No. 12/2017-Central Tax (Rate) services by a by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below INR 1,000 per day or equivalent is exempt from tax
  - Further, as per Entry No 13 of Notification No. 12/2017-Central Tax (Rate) services by way of renting of precincts of a religious place meant for general public (i.e. renting of rooms where charges are not more than INR 1,000 per day) is also exempt from tax
- Transfer of right to provide services
  - Transferring the right to provide certain services for a consideration is not in itself providing the services
  - Thus, these are supply of general services falling under HSN 9997 and are liable to GST
- Leasing out 100 commercial shops
  - As per Entry No 13 of Notification No. 12/2017-Central Tax (Rate) services by way of renting of precincts of a religious place meant for general public (i.e. renting of shops or other spaces for business or commerce where charges are not more than INR 10,000 per month) is exempt from tax
  - If the rent for such shops falls below INR 10,000/- per month, then no GST
  - If the rent for such shops exceeds INR 10,000 per month, then liable to GST

# Whether supply of various goods and services by a charitable trust is taxable or exempt under GST

- ❑ Renting out Kalyana Mandapam
  - As per Entry No 13 of Notification No. 12/2017-Central Tax (Rate) services by way of renting of precincts of a religious place meant for general public (i.e. renting of premises, community halls, kalyanamandapam or open area, and the like where charges are not more than INR 10,000 per day) is exempt from tax
  - Since the charges are less than INR 10,000 per day, the same is exempt from GST
- ❑ Access to temple, for which they collect vehicle entry fee
  - The access is provided to the temple premises and not to a road or a bridge [which is covered under the exemption Entry No. 23 of Notification No. 12/2017-Central Tax (Rate)]
  - Further, the same is not renting of precincts of a religious place meant for general public [to be covered under Entry No. 13 of Notification No. 12/2017-Central Tax (Rate)]
  - Thus, the same is liable to GST
- ❑ Floating tenders for transferring right to provide services in future
  - It is observed that the Appellant is not providing any particular service but desires to transfer the right to provide services against a consideration to be received by the acceptor, for a consideration
  - Provision of a particular service and transfer of right to perform a service are different
  - Thus, these are supply of general services falling under HSN 9997 and are liable to GST

**Karnataka AAR in case of Sri Malai Mahadeshwara Swamy Kshethra Development Authority [2020 (36) GSTL 435]**



# Whether provision of Mid-Day Meals, transfer of goods between States, sale of scrap are covered under Supply

## Facts

- ❑ The Appellant is a charitable trust and strives to eliminate classroom hunger by implementing Mid-Day Meal Scheme
- ❑ The Appellant is registered under GST at various States for having rental income
- ❑ In course of providing Mid-Day Meals, sometimes certain goods (*such as spices, foodgrains, kitchen equipment, office equipment, etc.*) are transferred from one State to another
- ❑ Further, certain scrap items in the form of empty oil and other tins, pipes and iron, empty bags, etc. are generated and which are sold from time to time
- ❑ At present, the Appellant is not paying GST on Mid-Day Meal Schemes, transfer of goods between States and sale of scrap items

## Questions

- ❑ Whether such transactions are covered under the scope of supply

## Ruling by AAR

- ❑ The intention of the Legislature is to tax all the activities of supply of goods and/ or services by charitable trust, except those specifically exempted (*i.e. charitable institutions qua their activities do not lend themselves to any specific concession or exemption*)
- ❑ The very fact that certain services have been carved out and given out a special treatment makes it clear that all trade and commerce transaction of Mid-Day Meal Scheme, transfer of goods and sale of scrap done commercially for consideration come within the broad ambit of 'business'; and thereby under the scope of supply
- ❑ As per Entry No 66 of Notification No. 12/2017-Central Tax (Rate) services to an Educational Institution, by way of a catering, including mid-day meal scheme sponsored by government is exempt from tax (thus, Mid-Day Meal Scheme are exempt under GST)

**Rajasthan AAR in case of Akshaya Patra Foundation [2020 (32) GSTL 407]**

# Whether accommodation services provided by charitable trust is liable to GST...

## Facts

- ❑ The Appellant is a charitable trust which is exclusively connected with students and education
- ❑ Not obtained registration under GST
- ❑ The Appellant is offering a bouquet of services that consists of lodging and boarding facilities besides compulsory personality development training which includes computer awareness activities (*such as developing skills to operate the computers, training for development of communication skills in English and other foreign languages*) for a consolidated fee of Rs. 22,250/-, with no option to choose the activities such as only lodging or only boarding or only training etc., to the sole benefit of students from poor families, from economical backward class, from rural areas who come to Pune for college education

## Questions

- ❑ Whether hostel accommodation provided is covered within the definition of charitable activities and thus exempt from GST
- ❑ Whether donations received to meet the expenses to run the hostel is chargeable to GST

## Ruling by AAR

- ❑ As per Circular No. 32/6/2018-GST (F.No.354/17/2017) dated 12 February 2018, the Government clarified the following:
  - hostel accommodation services does not fall within the ambit of charitable activities, and thus, not exempt under Entry No 1
  - however, hostel accommodation services to fall under services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes (covered as per Entry No 14)
  - in case where the declared tariff is less than INR 1,000/- per day, the same is exempt under GST
- ❑ From the scrutiny of such exemption, it is **important to note that description of service is ‘use based’** (if the accommodation is used for residential or lodging purposes, then it is immaterial who the user is)
- ❑ Given the above, the hostel accommodation services provided by the Trust is exempt under GST (*by way of Entry No 14 and not by Entry No 1*)

# Whether accommodation services provided by charitable trust is liable to GST

- ❑ The nature of income is an essential factor for ascertaining whether it will be taxable or exempt (i.e. when the nature of income loses its religious nature, it is liable to GST)
- ❑ The donations received without any instruction would be exempt, however where the donor is clearly receiving identifiable benefits in return (either in terms of advertising or publicity), the said donation amount received is to be treated as a consideration for supply and thus, liable to GST
- ❑ In the instant case, as the Appellant had not submitted the details, the authority is unable to answer this question

**Maharashtra AAR in case of Students' Welfare Association**  
**[2019 (24) GSTL 109]**

# Thank You!

**CA Ronak Thakkar**

Ronak@rndca.com

