

# ISSUES IN GST ON CHARITABLE TRUSTS, NON-PROFIT ORGANISATIONS AND CO-OPERATIVE SOCIETIES

CA VIKRAM MEHTA



# “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;**
  - (b) import of services for a consideration whether or not in the course or furtherance of business;
  - (c) the activities specified in Schedule I, made or agreed to be made without a consideration; and
  - (d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.
- Excludes—
- (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

# “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)<sup>1</sup>;
- (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;**

# “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) services provided by a race club by way of totalisator or a licence to 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;



# Liability to pay GST

- ▶ A person who supplies in furtherance of his business is liable to pay GST.
- ▶ A Charitable trust is a person and makes a supply (supply definition being very wide).
- ▶ Whether it can be said to be in furtherance of business....?

# Sai publication.....Supreme Court

From the combined reading of [Section 3, 2\(5A\)](#) and [2\(11\)](#) of the Act, it follows that the tax under the Act is leviable on the sales or purchases of taxable goods by a dealer and not by every person. From the facts of the present case, the sole object of the assessee **Trust is to spread the message of Saibaba of Shridi. It is also not disputed that the books and literature etc. containing the message of Saibaba were distributed by the Trust to the devotees of Saibaba at cost price. There is no dispute that the primary and dominant activity of the Trust is to spread the message of Saibaba. This main activity does not amount to "business".** *The activity of publishing and selling literature, books and other literature is obviously incidental or ancillary to the main activity of spreading message of Saibaba and not to any business as such even without profit motive and it is in a way a means to achieve the object of the Trust through which message of Saibaba is spread.*



# Sai publication.....Supreme Court

- It is clear from the Trust Deed and objects contained therein that it was not established with an intention of carrying on the business/occupation of selling or supplying goods. This being the position, it cannot be said that the Trust carries on the business of selling and supplying goods so as to fall within the meaning of "dealer" under [Section 2\(11\)](#) of the Act.



# COMPARISON OF BUSINESS DEFINITION

## GST

- ▶ Trade, commerce, profession.....  
manufacture,  
adventure.....
- ▶ Whether or not for pecuniary benefit
- ▶ any transaction in connection with, or incidental or ancillary
- ▶ Vocation (new word in the definition)

## OLD ACT

- ▶ Trade, commerce, profession.....  
manufacture,  
adventure....
- ▶ with a motive to make gain or profit and whether or not any gain or profit accrues
- ▶ any transaction in connection with, or incidental or ancillary





# ANALYSIS



- On the basis of the decision of Supreme Court and the current definition of Business, it is possible to argue that entities having main object of charitable activity cannot be said to be in business.
- It is obvious that the department will vehemently contest the above position leading to a fresh round of litigation.



# ANALYSIS



- It is pertinent to note that activity carried out by trust in pursuance of furtherance of object of trust V/s activity carried out to fulfill the objects of the trust are two distinctly different things.
- The former is in furtherance of objects of Trust and not in furtherance of business but the later activity cannot be said to be in furtherance of Objects of Trust.

# ISSUES...

- ▶ **Whether interest received by charitable trust will be covered as a part of turnover for calculation of aggregate turnover?**

Notification no. 12/2017 Serial no.27 exempts lending services where consideration is represented by interest or discount. Clause (zk) of this notification defines interest as under --“interest” means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but does not include any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised;

- ▶ **Whether because of RCM registration is must....?**

# ISSUES...

- ▶ Whether when the object of the trust is to further the cause of classical music in India whether such an object will be treated as charitable activity?
- ▶ Similarly providing farshan and mishta to public at large at reasonable price as a main object of trust is a charitable activity?

Charitable activity according to exemption notification

“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; or

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

(ii) advancement of religion , spirituality or yoga;



# ISSUES...

- **Consider a situation that a charitable trust has rented a small area for ATM of the bank?**

Most of the trusts run on interest income earned from deposits kept of the donation received. The rental income of ATM when added to exempt income, if the turnover exceeds the taxable limit,

Whether the trust would become liable for registration?  
If registration taken whether we can still argue for all other supplies, that supply is not in furtherance of business.




# ISSUES...

- Once registered means a person making a supply in furtherance of business and then any activity incidental or ancillary to the business is covered as a part of business.
- Thus whether because of renting of ATM all other activities of trust will said to be in furtherance of business?
- Whether tender fees received is a taxable supply?

# DONATION....

- ▶ Whether donation received by a trust is a consideration for a supply? Whose the service provider? Whose the service recipient? Whether donation in kind will also be treated in the same manner?
- ▶ Whether donation with a condition is a supply? (say a donation is given with a condition that sculpture of the donor's parents shall be installed)
- ▶ Whether donation given under CSR (Corporate social responsibility) is a supply?
- ▶ Whether grants in aid and subsidy received can be considered as donation?
- ▶ Whether donation given can be treated as barter, when the provider of donation advertises the product by naming donation as virtue for buying his product?
- ▶ Whether sponsorship received for conducting charitable activity can be considered supply?



# Service Tax Circular...127/9/2010

- ▶ Under the service tax regime in reply to the question as to whether donation and grants in aid received by a charitable foundation for training poor and marginalized youth will be treated as consideration received for such training and liable to be taxed.
- ▶ The important point here is regarding the presence or absence of a link between 'consideration' and taxable service. It is a settled legal position that unless the link or nexus between the amount and the taxable activity can be established, the amount cannot be subjected to service tax. Donation or grant-in-aid is not specifically meant for a person receiving such training or to the specific activity, but is in general meant for the charitable cause championed by the registered Foundation.
- ▶ On the reverse if the trust supplies in furtherance of business then whether tax needs to be charged on the Donations received by the trust.?



# ISSUES...

- Whether insurance claimed received by a trust is liable to GST?

Currently before the amendment to the clause of actionable claim whether GST will be payable or whether we can say that amendment is clarificatory in nature ?

- When TTD (Tirupati Tirumal Devasthanam) Sold the hair received after Hair Cut (mundan) is a supply or whether it is furthance of charitable objects of the trust?
- Whether the Hair received after mundan is a donation in kind?



# ISSUES...

➤ **Where a trust is running a library and on subscription the entry is given to students, etc. whether the subscriptions shall be liable to GST?**

➤ Notification no. 12/207 Serial no. 50 --

Services of public libraries by way of lending of books, publications or any other knowledge-enhancing content or material.

**Whether a trust will get the exemption?**



# ISSUES...

➤ Services by a person by way of-

(a) conduct of any religious ceremony;

Is exempt in notification 12/2017 serial no. 13

- **Whether a trust giving its premises only for conduct of religious ceremony will be covered under above clause?**
- **Whether all priests doing religious ceremony will be exempt under above clause?**
- **Whether Hair Cutting Charges are recovered is a supply.. Or a conduct of religious ceremony.?**
- **Consider a situation where the trust running a devi temple receives sarees as donation. Theses sarees are then auctioned whether it will be treated as a supply?**



# ISSUES....

- The house of Birla's have constructed Dharamshalas at various religious places. Theses places are rented at a nominal charges.
- On the other hand Iskon charges substantial amount for renting of rooms.
- **Whether both the above will be classified under notification no. 12/2017 serial no.13 Notification no 11/2017 sr no 7 (GST RATE)entry on accomodation and food)?**

# EDUCATION RELATED....

Services provided -

- (a) by an educational institution to its students, faculty and staff;
- (b) to an educational institution, by way of,-
  - (i) transportation of students, faculty and staff;
  - (ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory;
  - (iii) security or cleaning or house-keeping services performed in such educational institution;
  - (iv) services relating to admission to, or conduct of examination by, such institution; upto higher secondary:
- Provided that nothing contained in entry (b) shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent.

# ISSUES....

- Whether a person providing canteen service to college would get exemption under the above clause?
- Whether hostel fees charged to a degree college student and another to a resident student of higher secondary would both stand on the same footing? Whether the same would be applicable for mess charges?
- What would be the situation if single composite amount is taken for accommodation as well as food?
- Whether sale of craft material by school students to outsiders in exhibition to be treated as supply?
- Affiliation fee paid to foreign institutes for affiliation and student exchange program/ or courses etc..?
- Fees taken here... part of the course for 3 months is done abroad ... whether a supply....?.
- Where a foreign language is taught in an educational institute and a diploma certificate is granted for the same whether the exemption is available?

# EXEMPTION

12/2018 Exemption no.78. Services by an artist by way of a performance in folk or classical art forms of:

- (a) music, or
- (b) dance, or
- (c) theatre,

if the consideration charged for such performance is not more than one lakh and fifty thousand rupees:

Provided that the exemption shall not apply to service provided by such artist as a brand ambassador.

- **Where RamLeela is performed for a consideration for an event management company whether the said supply is exempt under the said clause?**



# ITC RELATED.....

- A trust is registered under GST for renting of its premises to general public.
- The ITC needs to be claimed cautiously....
- Goods/services given as donation ITC needs to be reversed....
- Import of goods by charitable trust for charitable activity.... No ITC
- Free food granted to employees by the trust....No ITC





# CO-OPERATIVE SOCIETIES

- Whether the concept of mutuality is applicable under the GST enactment?
- The definition of business specifically covers **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.**
- Persons include -- **a co-operative society registered under any law relating to co-operative societies;**
- **society as defined under the Societies Registration Act, 1860 (21 of 1860);**
- Whether a supply within the definition?



# EXEMPTION



- Service by an unincorporated body or a non- profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution –
  - (a) as a trade union;
  - (b) for the provision of carrying out any activity which is exempt from the levy of Goods and service Tax; or
  - (c) up to an amount of seven thousand five hundred rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex.



# ISSUES....

- Whether registration is necessary if gross receipts of residential society is more than 20 lakhs including property tax collection
- If member's contribution per month is Rs.9000 then GST is payable on entire 9000 or on 9000-7500 which is equal to Rs.1500?
- When gross receipts of residential society is more than 20 lakhs but individual members contribution per month is less than Rs.7500 whether registration is necessary?
- Whether collection for sinking fund liable as supply?



# ISSUES



- Whether electricity charges and water charges collected from the members can be treated as exempt supply? Or whether it is a composite supply by society to its members?
- Whether society and its members are related parties?



# ITC RELATED

- Whether ITC in respect of repairs and maintenance is allowable r.w.s.17(5)( c) & (d)
- Whether RCM paid credit is allowable to the society as ITC?(Lawyer fees paid for dispute in respect of two flat owners where society is also made a party.)
- Where commission is paid by a Credit Co-op Soc.(PATHPEDHI) to an agent (DSA) for loans. Whether GST is payable under reverse charge? Whether registration by DSA is compulsory as per sec 24(vii)?



# ITC RELATED

- When exemption of 7500/- is taken by a society then whether ITC reversal will have to be worked out?



©2012Coremeets.com

**CA VIKRAM MEHTA**