

Indirect Tax provisions for Charitable Trust

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Activity of Trust

FOR-PROFIT ACCOUNTING	VS	NONPROFIT ACCOUNTING
Driven by making profits for the business.		Driven by providing support for their mission.
Revenue is generated by customers making purchases.		Revenue is generated by donors, membership dues, fundraising, etc.
Expenses include costs associated with business operations and providing products or services.		Expenses include costs associated with program management and marketing activities for fundraising.
		

- ❖ The main object of every charitable and religious institutions or Trust is to promote **education, public health, religious activities and social welfare etc.**
- ❖ To accomplish the main object, funds are required and these funds can be arranged –
 - i. By **accepting donations or grants from people** – community contribution or from Government authority;
 - ii. By undertaking activities which are **incidental to accomplish main object**
 - Religious Trust will sale the products – Prasadam, Books etc.
 - Charitable Trust will do fund raising activity by organizing event or competition or exhibition or providing services;

Activity of Trust will cover under GST

Definition of person – S.2(84)

- (i) Individual & HUF
- (ii) PF & LLP
- (iii) Company
- (iv) AOP & BOI
- (v) Society & CHS
- (vi) CG or SG or LA
- (vii) Trust

- ❖ GST Law provides that all forms of supply of goods or services or both i.e. **any transaction or activity viz.**

- sale or transfer;
- barter or exchange;
- license or rental or lease;

if made by a person [S. 2(84)] **for a consideration** and **in the course or furtherance of business** [S. 2 (17)] would constitute **“supply”** and such transaction or activity would be within the ambit of GST.

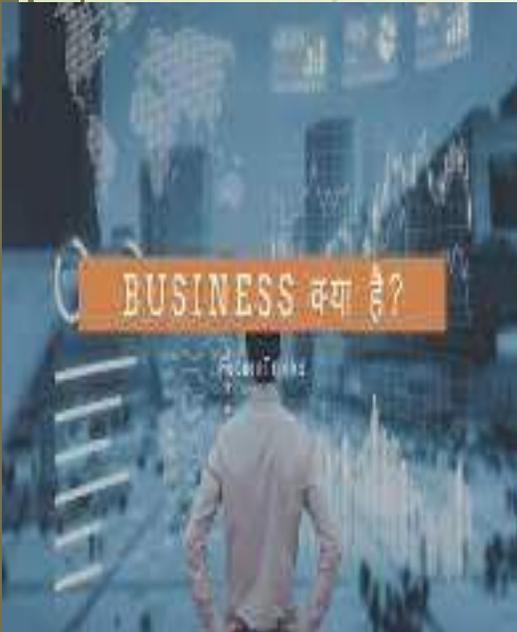
Charitable Purpose

- The trust document should specify the charitable purpose or purposes.
 - Unlike other trusts or business entities what leave purposes broad or open ended.
- Charitable purposes are broad and include:
 - Relief of poverty
 - Advancing education
 - Even politically biased education
 - Working to improve health of people; including medical research
 - Advancing religious institutions
- A trust that may only give assets to another charitable organization can also qualify as an irrevocable trust.

Activity of Trust will cover under GST

❖ 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;
- (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;



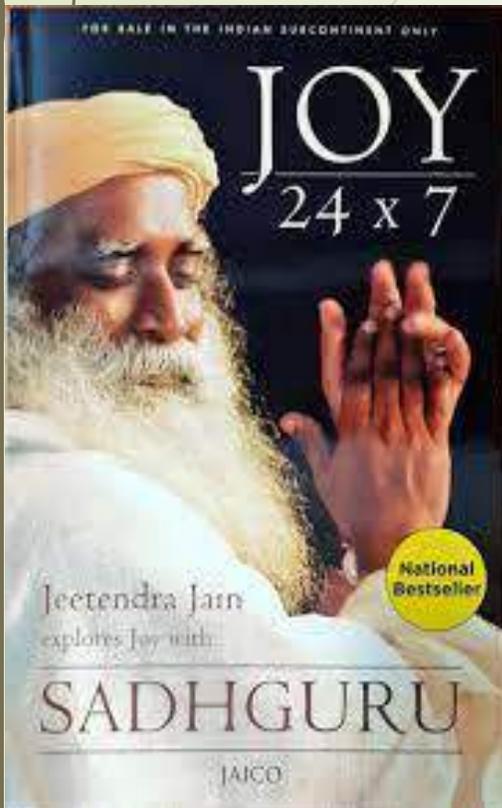
Activity of Trust will cover under GST

- ❖ On analysis of definition of scope of supply [S. 7], Business – [S. 2(17)] and person – S. 2 (84), it appears that activity or transaction which is carried out by Trust – charitable or religious would cover within the ambit of GST and Tax have to be payable by the Trust.

Sale of spiritual goods in Shibir / Satsang

- ❖ Trust was formed with the only objective of advancement of the teachings of Paramkrupaludev Shrimad Rajchandra i.e. Jain Dharam and spreading the knowledge of Jain Religion.

To spread knowledge of the Jain dharam through publications of books, audio CDs, DVDs, etc. and other materials for students and public in general, Trust sales such spiritual goods (books, CDs, DVDs etc.) which are incidental and ancillary to the main object of charity and spreading of knowledge.



Sale of spiritual goods in Shibir / Satsang

- ❖ It was upheld by **Maharashtra Appellate AAR (AAAR) in the matter of Shrimad Rajchandra Adhyatmik Satsang Sadhana Kendra** – Order No. MAH/AAAR/SS-RJ/14/2018-2019, dated 24-12-2018 as under –

The term 'trade' is a comprehensive term which covers the activity of buying, selling or exchanging goods or services. The terms 'trade and commerce' by themselves mean the buying or selling goods or services between people or two persons.

The charitable trust may be formed with the fundamental objectives of carrying out spiritual activity and salvation. But it also, at the same time, **sells goods and services under the auspices of the trust**. The trust sells various goods and services to the people desiring to buy them and **such an activity by itself forms a part of the objective of the trust**.

The objectives of the trust that though it is public charitable religious trust by name, **activities of trade and commerce also form a major part of the objectives of the trust, and hence it can be very well inferred that Trust is carrying on business**.

In The Tax Net

Sale of spiritual products alone not enough to be called charitable activity

AAR LAYS DOWN RULES

Maharashtra Authority for Advance Ruling lays down GST liability

Sale of books, magazines, DVDs and MP3 by charitable trusts not 'charitable activity'

Chargeable accommodation and food in Satsang also not charitable

AAR ruled these would qualify as supply and be liable to GST

Experts say the ruling provides clarity on what is liable to tax



Sale of medicine by Trust

❖ Trust was running a medical store through which medicines are supplied to patients at concessional or at a lower rate or with no profit.

❖ It was upheld by the **Hon'ble Gujarat High Court in the matter of Nagri Eye Research Foundation (2021) 128 Taxmann.com 310**, as under –

The expression 'supply' includes all forms of supply of goods and services or both such as sale, transfer, barter etc. made or agreed to be made for consideration by a person in the course or furtherance of business. It is not disputed that the petitioners are selling the medicines, may be at a cheaper rate but for **consideration in the course of their business.**

From the bare reading of the said definition, it clearly emerges that **any trade or commerce whether or not for a pecuniary benefit, would be included in the term 'business' as defined under section 2(17) of the said Act.**

Medical Store providing medicines even if supplied at lower rate would amount to supply of goods.



Sale of medicine by Trust

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"composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

- ❖ Hospital run by a Trust which supplies medicines, surgical items, implants, consumables and other allied items provided by hospital through hospital owned pharmacy **to in-house patients.**
- ❖ **In-house patients** are those patients, who are admitted by the hospital to receive treatment for disease, illness, etc. Such patients are provided with stay facilities, medicines, consumables, implants, dietary food and other surgery items **required for treatment.** These patients receive medical facility as per the scheduled procedure and have strict restriction to ensure quality/quantity of items for consumption. Hence, such patients live in the hospital, **during the course of provision of healthcare services** by the hospital to the patients admitted for diagnosis or treatment in hospital.
- ❖ Sale or supply of medicine to in-patients forms part of **composite supply of health care treatment services and hence exempt** pursuant to Serial No. 74 of N. No. 12/2017 - CTR **[Terna Public Charitbale Trust – AAR Maharashtra]**

Sale of Prasadam by Trust

- ❖ Sale of Prasadam by religious charitable trust to the devotee

It was upheld by the **Karnataka AAR in the matter of , Sri Malai Mahadeshwara Swamy Kshethra Development Authority Order No. KAR ADRG 29 of 2020**, it was upheld as under –

Entry No. 98 of the N. No. 2/2017 – CTR exempts the goods falling under "Prasadam supplied by religious places like temples, mosques, churches, gurudwaras, dargahs, etc.". It is very clear from the above, the items of **prasadam sold by the applicant are exempt from GST.**

But if the applicant sells items other than **edible items falling under HSN 2106**, like **Namkeens, Bhujia, mixtures then such goods are liable to tax at the appropriate rates as they do not form part of prasadam.**



Preparation and Serving of food

- ❖ Charitable trust registered under section 12AA of Income-tax Act, 1961, is engaged in preparation and serving of food to children of Government Schools under Midday Meal Program and Anganwadi Meal Program sponsored by Government. Trust receives remuneration from Government for preparation and serving of food viz. reimbursed as per the rate fixed by the Government for the transportation charges for lifting food grains from Food Corporation of India godown on basis of the release order and cooking cost of the meal.
- ❖ It was upheld by the **Rajasthan AAR in the matter of Akshaya Patra Foundation - Order No. RAJ/AAR/2018-19/28, dated 09-01-2019**, and it was upheld on analysis of the definition of “supply” and “business”, activity of preparation and serving of food under Mid Day Meal and Anganwadi meal programme undertaken by the applicant is **covered under definition of business**. There is no exemption granted to charitable trusts in case of supply of goods which are taxable and are not specifically exempt or Nil rated.



Examples of services provided by Trust

All the services provided by Trusts are liable for GST.

However, there are certain services to which exemption from payment of GST is granted under N. No. 12/2017

- ❖ Hostel accommodation services provided by Educational Trust to her student;
- ❖ Old age home boarding, lodging and maintenance provided by Trust;
- ❖ Services by way of conduct of religious ceremony;
- ❖ Services by way of renting of a religious place meant for general public;
- ❖ Services by way of renting of accommodation – Sarai's and Dharamsala;
- ❖ Services by way of renting of premises, community halls, kalyanmandapam etc.;
- ❖ Services by way of renting of shops or other spaces for business or commerce;
- ❖ Services of public libraries;
- ❖ Educational Services provided to students;
- ❖ Healthcare services provided to patients;
- ❖ Services by way of training or coaching in sports;
- ❖ Services by ways of training or coaching in re-creational activities relating to arts or culture;

Donation in monetary forms

- ❖ Donations received by trust without any instruction would not be taxable, however where **donor is clearly receiving identifiable benefits in return either in terms of advertising or publicity, said donation amount received is to be treated as a consideration for supply of goods or services or both and liable to GST.**

[Students' Welfare Association – AAR Maharashtra – Order No. GST-ARA-55/2018-19/B-170, dated 29-12-2018]

- ❖ If payment made to a charitable organization has character of gift or donation and **purpose is philanthropic** (i.e. it leads to no commercial gain) and it is not for advertisement, then GST is not leviable - In all other cases GST is leviable.

[Jayshankar Gramin Va Adivasi Vikas Sanstha – AAR Maharashtra – Order No. GST-ARA-97 of 2019-2020/B-91, dated 10-11-2021]



Donation in monetary forms

- ❖ Donations or gifts received from individual donors by charitable organizations involved in advancement of religion, spirituality or yoga which is acknowledged by them by placing name plates in the name of the individual donor.

If following three conditions are fulfilled than such donation would not tantamount to provision of services and GST will not be applicable –

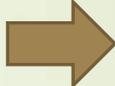
- Donation to charitable organization;
- Payment has the character of gift or donation;
- Purpose of donation is philanthropic (i.e. it leads to no commercial gain) and not advertisement. **[Circular No. 116/35/2019 – GST, dated 11-10-2019]**

- ❖ **Trust received donation to carry out specified projects under Corporate Social Responsibility (CSR)**

Examples of Donations not considered as “supply”

- “Good wishes from Mr. Rajesh” printed underneath a digital blackboard donated by Mr. Rajesh to a Trust.
- “Donated by Smt. Malati Devi” in the memory of her father” written on the door or floor of a room

Grants / Subsidy in monetary forms received by Trust

- ❖ Trust receives grant of fixed sum of money every month from Government under 'One stop crises center' scheme to render services to destitute women who are litigating divorcees, or homeless or victims of domestic violence. 

S. 7 – Supply

- There has to be a supply of goods or services;
- Such supply has to be for a consideration;
- Such supply should be in the course or furtherance of business.

Meaning of subsidy:

any money/amount granted by a government to any private person or company for undertaking any charitable activities, which are beneficial to the public, will be construed as subsidy.

Activities undertaken by appellant are for welfare of said destitute women. Amount of money reimbursed by Government to appellant is subsidy and not consideration as entire amount is being spent in activities which are advantageous to public.

[Jayshankar Gramin Va Adivasi Vikas Sanstha – AAAR Maharashtra – Order No. MAH/AAAR/AM-RM/09/2022-23, dated 21-09-2022]

Services specifically exempted

- ❖ **Services by an entity registered under section 12AA or 12AB of the Income Tax Act, 1961 by way of charitable activities [Sr. No. 1]**

Charitable activities” means activities relating to -

(i) **public health by way of, -**

(A) **care or counselling 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;**

(iii) **advancement of educational programs 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;**



Charitable activities

- ❖ Trust is engaged in the plantation of mangrove trees in 200 hectare area along coastal belt of Gujarat. Plantation of Mangrove trees have various benefit to protect environment such as, protecting vital coral reefs and sea grass beds, acting as biological filters and sink for several pollutants from terrestrial runoff, providing a buffer for nutrients, metals and other toxicants entering coastal waters, protecting shorelines from storm and increase coastal stability, reducing global carbon dioxide protect environment. Trust received the compensation from M/s. Good carbon Impact GmbH for plantation of mangroves.



It was upheld by **Gujarat AAR in the matter of Vikas Centre for Development – Order No. GUJ/GAAR/R/2022/50, dated 20-12-022** that above activity would cover within the definition of “charitable activity” under clause 2 (r)(iv) and exempt from tax.

Charitable activities

- ❖ Company is acting as nodal agency of State Government for implementing schemes relating to environment protection. For implementation of schemes, appellant receives consideration from their clients/channel partners for allied services rendered by them such as they **collects Registration fees, supervision/service charges, processing fees, etc. and also receives consideration for activities such as scrap battery sale and from sale of Tender Forms.**



It was upheld by **Chhatisgarh AAR in the matter of Chhatisgarh State Renewable Energy Development Agency – Order No. STC/AAAR/04/2020, dated 16-07-2020** that impugned activities cannot be merely or primarily for preservation of environment so as to qualify as charitable activity. Environmental friendly technologies are used by channel partner but transactions of appellant for consideration is not for protection of environment but for providing allied facilities. Hence, not eligible for exemption.

Charitable activities

- ❖ Trust registered u/s. 12AA of IT Act, is 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 Non-Governmental Organizations (NGOs), Hospitals, Trusts and other Charitable Organizations.



It was upheld by **Tamilnadu AAR in the matter of Dream Runners Foundation – Order No. 6/AAR/2019, dated 22-01-2019** that only those activities of such an entity are exempt from GST which qualify under the definition of "charitable activities" given in the notification. This activity of conduct of Marathon event by the Applicant does not fall under the definition for Charitable activities as provided in N. No. 12/20217 read with clause 2 (r).

Accordingly, activities are not exempt though funds are used for charitable purpose.

Conduct of Religious Ceremony & Renting

Services by a person by way of –

- (a) Conduct of any religious ceremony;
- (b) Renting of precincts of a religious place meant for general public, owned or managed by -
 - (i) an entity registered as a charitable or religious trust under section 12AA or 12AB of the Income-tax Act, 1961; or
 - (ii) trust or institution registered under S. 10 (23C) (v) of Income Tax Act;
 - (iii) body or authority covered under S. 10 (23BBA)

Such exemption is not applicable to –

- (i) renting of rooms where charges are INR 1,000 or more per day;
- (ii) renting of premises, community halls, kalyanmandapam or open area, and the like where charges are INR 10,000 or more per day;
- (iii) renting of shops or other spaces for business or commerce where charges are INR 10,000 or more per month.



Conduct of Religious Ceremony

❖ **Meaning of Religious Ceremony**

A religious ceremony is a formal or ritualized event or series of events that are carried out within a religious context. It typically involves a prescribed set of actions, words, and symbols that are intended to convey meaning and foster a connection with the divine or the sacred.

Religious ceremonies can take many forms and can vary greatly between different religions and cultural traditions. **Some common examples of religious ceremonies include baptism, confirmation, communion, marriage, funerals, and various seasonal or holiday observances.**



Conduct of Religious Ceremony

- ❖ Trust was rendering seva services & Utsav services in form of religious ceremony to devotees who visits temple and book pooja and special darshan facilities. It collects charges for same from devotees.



It was upheld by **Karnataka AAR in the matter of Sri Malai Mahadeshwara Swamy Kshethra Development Authority Order No. KAR ADRG 29 of 2020**, it was upheld that **“seva services”** are **not in the course or furtherance of business** and hence the same cannot be covered under the scope of supply, though there is money received by the applicant for the same. **Further, even the definition of consideration also states that the money received should be in relation to the supply of goods or services or both and since the same does not fall under supply, the money received is not a consideration in relation to the supply of goods or services or both.** Hence the seva services provided by the applicant is not a supply and hence is not a part of the turnover and hence cannot be taxed under the GST Act.

Renting of Rooms

- ❖ The appellant is a religious charitable trust and conducts religious functions for the propagation of Jain Dharma. In order to cater to the needs of devotees who come from afar, the appellant has erected **temporary accommodation facilities of 2BHK unit for the use of devotees** during the period of the religious function and charges for the same are less than INR 1,000 per day and hence claims exemption under Entry 13 (b)

(i)

It was upheld by **Karnataka AAAR in the matter of Acharya Shree Mahashraman Chaturmas Pravasa Vyavastha Samiti Trust - Order No. KAR / AAAR / 16 / 2019 – 2020, dated 02-03-2020**, it was upheld that Appellant is **not renting out 'rooms'** but **rather is renting out units of accommodation comprising of 2 BHK unit**. The entire unit with facilities like water, electricity, cot, bed, pillow, bedspread and air-conditioner is given out on rent. Therefore, a unit of accommodation of this kind **cannot be considered as renting of rooms and will not be covered in the entry Sl. No. 13**



Hostel Services

Entry No. 12

Services by way of renting of residential **dwelling for use as residence** *[except where the residential dwelling is rented to a registered person] * w.e.f. 18-07-2022

Entry No. 14

Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having value of supply [Substituted for "declared tariff" by Notification No. 14/2018-Central Tax (Rate), dated 26-7-2018] of a unit of accommodation below or equal to INR 1,000 per day or equivalent.

This Entry No. 14 was omitted by Notification No. 4/2022 -Central Tax (Rate), dated 13-7-2022, w.e.f. 18-7-2022



Hostel Services

- ❖ Hostel services provided by Charitable Trust to their student would cover within the exemption Entry No. 12 or Entry No. 14

CBIC have clarified through its circular No. 32/06/2018 – GST, dated 12-12-2018 that when Trust provides hostel accommodation services to their students, it would not be eligible to claim the exemption under Entry No. 1 being **charitable in nature**.

Further, circular provides that services 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 one thousand rupees per day or equivalent are exempt. Thus, accommodation service in hostels including by Trusts **having declared tariff below one thousand rupees per day is exempt. Similar view were taken in Ramnath Bhimsen Charitable Trust – AAR Chhatisgarh – (2019) 105 Taxmann.com 153**

Karnataka High Court in the matter of Taghar Vasudeva Ambrish – (2022) 135 Taxmann.com 287 (Karnataka) upheld that residential premises rented as hostel to students is covered under residential dwelling being used as residence **and eligible for exemption under S. No. 12.**

Entry No. 14 is omitted w.e.f. 18-07-2022

Accordingly, services provided Trust by way of providing hostel services would be taxable.

Import of Services

- ❖ Any **services** received by charitable trust registered u/s. 12AA of Income Tax Act, 1961 from a **provider of services located outside India**, for the purpose of providing charitable activities are exempt from tax pursuant to **Entry 10 of N. No. 9/2017 – IGSTR** and the trust is not liable to pay GST on such imports of services under reverse charge mechanism (RCM).
- ❖ However, this **exemption shall not apply** to Online Information and Database Access or Retrieval (OIDAR) services received by charitable trust.
- ❖ **OIDAR services includes services such as advertising on the internet, provision of e-books, music, movies, software, online gaming etc.,**



Services on which tax to be paid under RCM

- ❖ **Trust have to discharge tax liability under Reverse Charge Mechanism when they are procuring services from –**
 - i. **Goods Transport Agency (GTA)** for transportation of goods by road to a Trust registered under GST – 5%;
 - ii. **Legal Services** (any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority) provided by an individual advocate or firm of advocate or solicitor – 18%;
 - iii. **Renting of immovable property** supplied by Central or State Government or Local Authority to a Trust registered under GST – 18%;
 - iv. **Security services** (services provided by way of supply of security personnel) provided by an Individual, HUF or Partnership Firm to a Trust registered under GST – 18%



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