

# E-NEWSLETTER

## INSIGHT INTO GST AND ITS IMPACT ON CHARITABLE ORGANIZATIONS & NGOS

ISSUE NO 15. | JULY 2020 | Volume I



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The implementation of Goods and Service Tax (GST) has been a revolutionary reform in the indirect taxation regime of the country. It is a comprehensive, multistage, destination based tax which is applicable on supply of goods and services and has unified the entire nation as far as indirect taxation is concerned. From the time the new taxation regime has kicked into force with effect from 1<sup>st</sup> July, 2017 it has been the talk of the town till today due to its mutiple impacts on various sectors of economy.

It is seen that even after almost 3 years, there is still a misconception prevailing among the social sector that GST is applicable only to the business concerns carrying out industrial and commercial transactions and they are not covered within the purview of GST. However, it is pertinent to note that the provisions relating to taxation of activities carried out by charitable institutions and religious trusts have been borrowed and carried over from the erstwhile service tax provisions. Accordingly, all the services provided by such entities are not exempt. In fact, there are many services that are provided by NGOs which falls within the ambit of GST.

## APPLICABILITY OF GST FOR CHARITABLE ORGANIZATIONS

### CRITERIA FOR EXEMPTION TO CHARITABLE ORGANIZATIONS

As per the Notification No. 12/2017 dated 28<sup>th</sup> June, 2017, services provided by an entity registered under Section 12AA of the Income Tax Act, 1961 by way of charitable activities are exempt from whole of GST vide entry no. 1 of the notification. So, exemption is available to charitable organizations only on fulfilling both the following conditions:

- a) The organization must be registered u/s 12AA of the Income Tax Act and;
- b) Such services or activities carried out by the organization are charitable in nature.

Thus, it is clear from the notification that being registered u/s 12AA is not enough. It is also essential that the activities must conform to the term "charitable activities" as defined in the said notification.

### DEFINITION OF CHARITABLE ACTIVITIES UNDER GST

Compared to Income Tax Act, the definition of charitable activities under GST has been made more specific and exhaustive to cover only limited activities. As per Clause 2(r) of the Notification No. 12/2017, the charitable activities means activities relating to:

- i) Public health by way of:
  - A) Care or counselling of
    - I) Terminally ill persons or person with severe physical or mental disability
    - II) Persons afflicted with HIV or AIDS
    - III) Persons addicted to a dependence-forming substance such as narcotic 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 rural area
- iv) preservation of environment including watersheds, forests and wildlife

# DISCUSSION ON TAXABILITY/EXEMPTION OF CERTAIN SERVICES PROVIDED BY NGOS UNDER GST



## 1. RENTING OF IMMOVABLE PROPERTY

As per the Entry No. 13 of the Notification no. 12/2017, income from renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a charitable or religious trust u/s 12AA or 10(23C)(v) or 10(23BBA) of the Income Tax Act, has been exempt from GST. However, such exemption shall not apply to:

- a) Renting of rooms where charges are Rs. 1000/- or more per day.
- b) Renting of premises, community halls, open area and the like, where the charges are Rs. 10000 or more per day
- c) Renting of shops or other spaces for business or commerce where charges are Rs. 10,000 or more per month.

### SOME KEY RELATABLE DEFINITIONS ON THE TOPIC:

- i) **Religious Place** – a place which is primarily meant for conduct of prayers or worship pertaining to a religion, meditation or spirituality.
- ii) **Precincts** – An area within the walls or perceived boundaries of a particular building or place, an enclosed or clearly defined area of ground around a place of worship, college etc..

### Interpreting the law and our view:

From the above, it can be interpreted that if the immovable properties so owned and rented out by the charitable trusts are situated within or annexed to the premises of a religious place, income from letting out of such property shall be wholly exempt from GST, otherwise shall be liable to GST.

It is also implied that even if the property is situated within the precincts as defined, but the rent amount exceeds the respective limits so provided, the income shall no longer be exempt and shall be liable to GST.

## 2. CONDUCT OF RELIGIOUS CEREMONY OR FUNCTIONS

Income from a religious ceremony organized by a charitable trust have also been exempted from GST vide the same entry no. 13 of the abovesaid notification. So, it implies that the income from religious functions and poojas conducted on special occasions by the person so authorized is exempt from GST.

### Interpreting the law and our view

In the above case, the nature of income is an essential factor for ascertaining whether it will be taxable or exempt from GST. If the income loses its religious nature, it will definitely be liable to GST.

**For example:** In our view, if the donation for conducting religious ceremony has been received with the instruction to advertise the name of the donor, it might be liable to GST, as renting out space to agencies for advertisement hoardings is a taxable service.

# **DISCUSSION ON TAXABILITY/EXEMPTION OF**

## **CERTAIN SERVICES PROVIDED BY NGOS UNDER GST**



### **3. TRAINING OR COACHING IN RECREATIONAL ACTIVITIES**

As per Entry No. 80 of Notification No. 12/2017, an entity registered u/s 12AA and engaged in providing services by way of training or coaching in recreational activities relating to arts or culture or sports, have been exempt from the purview of GST.

### **4. ORGANIZING YOGA AND MEDITATION CAMPS**

Charitable trusts organizing yoga, meditation or fitness camps by receiving any amount in the nature of donation or fees or any other charges, by whatever name called, from the participants in the name of accomodation or fooding etc.. shall be liable to GST. However, in our view, organizing free camps might not be covered under the purview of GST.

### **5. RUNNING PUBLIC LIBRARIES**

The activity of running public libraries and lending books, other publications or knowledge enhancing content/material has been specifically excluded by way of Entry No. 50 of the Notification No. 12/2017. In common parlance, a public library can be understood as one which is open for all and is able to cater to educational, informational and recreational needs of its users through donations, subscriptions etc..

However, it seems that private libraries have not been exempted and rightly so because they are usually restricted for only members and also charge membership fees.

### **6. RUNNING OF EDUCATIONAL INSTITUTION**

The charitable organizations running schools, colleges or any other educational institutions have been exempted from GST on fulfillment of certain specified criterias as provided in the Notification No. 9/2017. Similarly, certain services provided by and to educational services (including those run by charitable entities) have been exempted as listed out in Entry No. 66 of the Notification No. 12/2017. **The detailed impact of GST on education sector shall be discussed in our next issue.**

### **7. SUPPLY OF GOODS**

There is no exemption for supply of goods by charitable organizations. Thus any goods supplied by such entities for consideration shall be liable to GST.

### **8. RUNNING OF HEALTHCARE SERVICES**

Entry No. 74 of the Notification No. 12/2017 (which is applicable to all persons including charitable trusts) exempts healthcare services at clinical establishments and an authorised medical professional or paramedics from the levy of GST. Clause (zg) of the same notification defines healthcare services to be any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India. It also includes any services by way of transportation of the patients to and from a clinical establishment. It is pertinent to note that such services provided by doctors and paramedics, whether provided in the capacity of employee of a clinical establishment or in their individual professional capacity, both have been exempted from the purview of GST.

Clinical establishment has also been specifically defined in clause(s) of the said notification to include a hospital, nursing home, clinic, sanatorium or any other institution that provides such healthcare services as defined above and facilities for carrying out diagnostic or investigative services of diseases.