



Between Fine Lines

**GST implications on Charitable Trusts and
NGOs**

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April 14, 2020

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GST ON CHARITABLE ACTIVITIES

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Piers of Supply in GST:

(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;*

What we need to constitute Supply:

- Any Supply
- Made or agreed to be made – An enforceable contract
- for a consideration – Direct Nexus
- in the course or furtherance of business - ??

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Business under GST – S. 2(17):

Business includes:-

a) any

trade	commerce	manufacture	profession
vocation	adventure	wager	any other similar activity

whether or not it is for a pecuniary benefit;

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

Income Tax Act, 1961

"business" includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture;

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Some past decisions on Charitable Activities:

Citation	Decision
Narain Swadeshi Wvg. Mills v. CEPT [1954] 26 ITR 765 (SC)	The word 'business' connotes some real, substantial and systematic or organised course of activity or conduct with a set purpose.
Mazagaon Dock Ltd. v. CIT/CEPT [1958] 34 ITR 368 (SC)	The word 'business' is one of wide import and in fiscal statutes, it must be construed in a broad rather than a restricted sense.
CIT v. Prabhu Dayal [1971] 82 ITR 804 (SC)	Business, as understood in the income-tax law, connotes some real, substantial and systematic or organised course of activity or conduct with a set purpose. This does not, however, mean that under no circumstances a single transaction can amount to a business transaction.

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Understanding pre requisites of Business

- **Intent:** Is the activity undertaken with an intent of entering into a contract for supplying goods / services
- **Measure:** Is there a proper measure for the activities – defined rates
- **Rules:** Are there business rules / principles applied in such activity
- **Importance of consideration:** Is consideration driving the performance of activity
- **Trade Practise:** Is similar activity being undertaken by other persons in trade

Excluded by clause (c):

- **Volume:** Size of business will not matter
- **Frequency:** Even a single transaction can constitute business
- **Continuity:** Even a short term business can be undertaken
- **Regularity:** Is the offering for activity recurring with reasonable consistency

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What is Charitable Activity – Is donation a consideration?

- Circular No. 127/9/2010-ST dated 16.08.2010 and F.No.354/119/2010- TRU dated 16th August, 2010
*"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. **Between the provider of donation/grant and the trainee there is no relationship other than universal humanitarian interest.**"*
- Board Circular dated 28 January, 2009
Secondly, service tax, unlike direct taxes, is chargeable on the gross amount received towards the service charges, irrespective of whether the venture is 'profit making, loss making or charity oriented' in its motive or its outcome.

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What is Charitable Activity?

- Taxation of Services - An Education Guide dated 20.06.2012 :
“2.2.7. Are research grant with counter obligation on researcher to provide IPR rights on outcome of a research a consideration?
In case research grant is given with counter obligation on the researcher to provide IPR rights on the outcome of research or activity undertaken with the help of such grants then the grant is a consideration for the provision of service of research. General grants for researches will not amount to a consideration.”
- Circular No. 116/35/2019-GST, dated 11-10-2019
It has been clarified that where there is no reference or mention of any business activity of the donor which otherwise would have got advertised, the payment has the character of gift or donation and the purpose is philanthropic (i.e. it leads to no commercial gain) and not advertisement, GST is not leviable.
- Notification No. 12/2017-C.T. (Rate), dated 28-6-2017, issued by the Director General of Tax Payer Services, Central Board of Excise & Customs, wherein it was pointed out that there was no exemption to supply of goods by charitable trusts.

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What is Charitable Activity?

- Tax Research Unit vide Circular No. 32/06/2018-GST, dated 12th February, 2018.

Sr. No.	Issue Clarification	Clarification
1.	Is hostel accommodation provided by Trusts to students covered within the definition of Charitable Activities and thus, exempt under Sl. No. 1 of notification No. 12/2017-C.T. (Rate).	Hostel accommodation services <u>do not fall within the ambit of charitable activities</u> as defined in para 2(r) of notification No. 12/2017-C.T. (Rate). However, 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. [Sl. No. 14 of notification No. 12/2017-C.T. (Rate) refers]

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Notification No. 12/2017 – CT(R)

- (r) "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 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;

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Cannons of Interpretation

- Specific terms in a statute prevail over general terms
- If Legislature intends for legislation to change the interpretation of a judicially created concept, it makes that intent specific.
- If the language is plain, “the sole function of the courts is to enforce it according to its terms.”

Application to Charitable Activities:

- Definition of charitable activity not inclusive definition but exclusive one
- Source of funds and not application of funds determine its taxability
- Registration under S.12A / 12 AA etc of Income Tax Act, 1961 as charitable entity would not determine charitability under GST

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Some past decisions on Charitable Activities:

Citation	Decision
Commissioner of Sales Tax v. Sai Publication Fund - (2002) 4 SCC 7	“.....Where the <u>main activity is not business</u> , then any incidental or ancillary transaction, unless established by the revenue to be an independent business transaction, will also be considered as charitable only, and not ‘business’. Since the main and dominant activity of the assessee trust in this case, is to spread the message of Saibaba, then bringing out publication and sale thereof, by the assessee trust to its devotees at cost price does not amount to ‘business’.”
State of Bombay v. Ahmedabad Education Society (Per : C.J. Shri M.C. Chagla) - (1956) 7 STC 497 BOM	It is not merely the act of selling, buying, etc., that constitute a ‘dealer’, but the ‘object of the activity,’ resulting in sale or supply of goods, that would attract sales tax. If the Legislature intended to tax every sale or purchase irrespective the object or activities out of which the transactions arise, then it was unnecessary to state that the person must carry on business of selling, buying, etc.”.

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Some past decisions on Charitable Activities:

Citation	Decision
Sri Chaitanya Educational Committee 2019 (29) G.S.T.L. 712 (Tri. - LB)	for an institute to claim that it is not a 'commercial training or coaching centre', it must also be issuing certificates recognized by law for the time being in force. <u>Mere not for profit will not help in availing exemption.</u>
Anjuman Islahul Muslimin 2019 (27) G.S.T.L. 685 (Tri. - All.)	Merely because the appellant, being a society, is maintaining the Mosque will not turn them into a religious body, though the same may be a charitable organization.
Rajasthani Sangh 2019 (25) G.S.T.L. 34 (Tri. - Chennai)	It is seen that they have collected donations for buildings, putting up dispensary, etc. These were accounted under General Fund Account. Being a charitable organisation, a strong inference can be drawn that the amount received are in the nature of donations only.

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Some past decisions on Charitable Activities:

Citation	Decision
Shri Kutch Kadva Patidar Samaj 2015 (39) S.T.R. 160 (Tri. - Mumbai)	It has come on record that the hall is booked on the condition that the service recipient will pay the donation. As the donation is compulsory for booking of the hall for social function, in these circumstances, we find no merit in the contention of the appellant-assessee that this amount is not to be counted towards the gross amount towards booking of the hall for social function.
Patanjali Yogpeeth Trust 2018 (363) E.L.T. 144 (Tri. - Del.) Affirmed in 2019 (27) GSTL J34 (Supreme Court)	<p>In the present case, the members of Vanprastha Ashram Scheme are not member of the Patanjali Trust, the appellant herein, but are the members under particular scheme of the said Trust for the only purpose of being leased out a residential accommodation for their life time. Held to be a commercial activity and thus, taxable.</p> <p>No doubt the members of Vanprastha Ashram Scheme are also getting that accommodation for attending the Yoga Camps but the fact is apparent and admitted that Yoga Camps can still be attended by any member of the appellant Trust irrespective of the being the member of Vanprastha Ashram Scheme.</p>

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Some AAR on Charitable Activities:

Advance Ruling	Decision
In Re : Akshaya Patra Foundation	Preparation and serving of food under Government sponsored Anganwadi meals programme is covered under the scope of 'supply'
In Re : World Researchers Associations	A joint reading of activities covered under the notification and the activities performed show that promotions of Research and publishing of online research journal are not activities contemplated in the exemption entry since they do not fall under any charitable activity under GST
In Re : Children Of The World India Trust	Receipt of the Adoption Fees paid under Regulation 46 of the Adoption Regulations, 2017 by the Prospective Adoptive Parents to the Trust is exempt as it is used for shelter, food, clothing, foster care, maintenance, medical treatment and primary education and basic computer skills of these abandoned children/orphans in their Bal Vikas Kendras till the time they are adopted

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Some AAR on Charitable Activities:

Advance Ruling	Decision
In Re : Indian Institute Of Corporate Affairs	It is not a case where AICL has donated a lump sum to the applicant for carrying out activities which the applicant may be persuing. The amount paid in this case is linked to specific taxable activity.
In Re : Students' Welfare Association	activities of the Trust in providing hostel accommodation facilities to the students who come to Pune for education do not fall within the ambit of charitable activities.
In Re : Association Of Inner Wheel Club Of India	Inner Wheel Club (a charitable entity) membership can only be availed against payment of annual membership fees, renewable annually. Only the members are granted various facilities and/or benefits, enabling them to attend conventions/meetings for the furtherance of the objectives of the Organisation.

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Some AAR on Charitable Activities:

Advance Ruling	Decision
In Re : Dream Runners Foundation Limited	The Applicant collects an amount from participants registered to for the marathon, treating them as donations. The money collected by the Applicant, from the participant in the Marathon is used for the expenses of organizing the Marathon in terms of paying the registration partner, event management charges, prize money, publicity, other organizing expenses such as T-shirts, banners and other related materials etc. as seen in their balance sheets. Therefore, 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 the same is liable to GST.
In Re : Shrimad Rajchandra Adhyatmik Satsang Sadhana Kendra Affirmed in 2019 (20) G.S.T.L. 779 (App. A.A.R. - GST)	As such arranging residential or non-residential Satsang/Shibir/yoga camps by accepting/charging some amount from the participants will not be covered under "charitable activities" within the meaning of definition provided at Definitions at 2(r) of Notification No. 12/2017 Central Tax (Rate), dated 28-6-2017 of the expression charitable activities and in particular advancement of religion, spirituality or yoga.

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Activities undertaken by Charitable Institutions:

- Sale of Books / Memoirs / Prasadam : Taxable unless specifically exempt
- Provision of food:
- Installation of public utilities
- Undertaking CSR Activities against grants from Corporate
- Corpus – Specific purpose for e.g., building construction, equipment purchase etc.
- Fund raising events:
- Renting of rooms etc. as ancillary income

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Some receipts of Educational Institutions

- Rent :
- Interest :
- Dividend :
- Advertisement Charges :
- Royalty Income :
- Fees from Educational activities:
- Miscellaneous Receipts : Sale of Forms, Badges, files and other sundries, sale of fixed assets etc.

A photograph of a city skyline, likely New York City, viewed through the opening of a dark cave. The city is bathed in a teal or cyan light, and the cave's interior is dark and textured. The text 'Thank You' is centered over the image in a large, white, sans-serif font.

Thank You

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