

GST on Charitable and Religious Trusts

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Prepared by: National Academy of Customs, Indirect Taxes & Narcotics

The provisions relating to taxation of activities of charitable institutions and religious trusts have been borrowed and carried over from the erstwhile service tax provisions. All services provided by such entities are not exempt. In fact, there are many services that are provided by such entities which would be within the ambit of GST.

Notification No.12/2017-Central Tax (Rate) dated 28th June 2017 exempts services provided by entity registered under Section 12AA of the Income-tax Act, 1961 by way of charitable activities from whole of GST vide entry No. 1 of the notification, which specifies that "services by an entity registered under Section 12AA of Income-tax Act, 1961 by way of charitable activities" are exempt from whole of the GST. Thus as per this notification, exemption is given to the charitable trusts, only if the following conditions are satisfied.

(a) Entities must be registered under Section 12AA of the Income- tax Act, and

(b) Such services or activities by the entity are by way of charitable activities.

Thus, it is essential that the activities must conform to the term "charitable activities" which has been defined in the notification as under "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;

(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.

This notification makes the exemption to charitable trusts available for charitable activities more specific. While the income from only those activities listed above is exempt from GST, income from the activities other than those mentioned above is taxable. Thus, there could be many services provided by charitable and religious trust which are not considered as charitable activities and hence, such services come under the GST net. The indicative list of such services could be renting of premises by such entities, grant of sponsorship and advertising rights during conduct of events/functions etc.

This is also borne out from the fact that in so far as renting out of religious precincts is concerned, there is a limited exemption available to such entities. Activities not covered by the specific exemption would be taxable. Entry No.13 of notification no.12/2017- Central Tax (Rate) dated 28th June, 2017, provides the following exemption to entities registered under Section 12AA of the Income Tax Act:

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 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 nothing contained in entry (b) of this exemption shall apply to:

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

Thus, the law gives a limited exemption to renting of only religious precincts or a religious place meant for general public by the entity registered under Section 12AA of the Income Tax Act. As per clause (zc) of the said notification, the term "general public" means "the body of people at large sufficiently defined by some common quality of public or impersonal nature".

The term "religious place" as per the clause (zy) of the said notification means "a place which is primarily meant for conduct of prayers or worship pertaining to a religion, meditation, or spirituality". Dictionary meaning of "precincts" is an area within the walls or perceived boundaries of a particular building or place, an enclosed or clearly defined area of ground around a cathedral, church, temple, college, etc.

This implies that if immovable properties owned by charitable trusts like marriage hall, convention hall, rest house for pilgrims, shops situated within the premises of a religious place are rented out, income from letting out of such property is wholly exempt from GST. But if such properties are not situated in the precincts of a religious place meaning thereby not within walls or boundary walls of the religious place, income from such letting out will lose this exemption and income from it will be liable to GST.

Income from a religious ceremony organised by a charitable trust is exempt as per the above notification. So the income from Navratri functions, other religious functions, and religious pooja's conducted on special occasions like religious festivals by persons so authorized for this purpose by the charitable or religious trust are exempt from GST.

But a careful perusal of this exemption shows that all income from such a religious ceremony is not exempt (services other than by way of conduct of religious ceremony are not exempt). Therefore, the nature of income is an essential factor for ascertaining whether it will be taxable or exempt. If income loses its religious nature, it is definitely chargeable to GST. For example, if with regard to Ganesh Utsav or other religious functions, charitable trusts rent out their space to agencies for advertisement hoardings, income from such advertisement is chargeable to GST, as this will be considered as income from the advertisement services. Further, if donation for religious ceremony is received with specific instructions to advertise the name of a donor, such donation income will be subject to GST. But if donation for religious ceremony is received without such instructions, it may not be subject to GST.

Similarly, entry No.80 of notification no.12/2017-Central Tax (Rate), provides the following exemption to an entity registered under Section 12AA.

Services by way of training or coaching in recreational activities relating to:

- (a) arts or culture, or
- (b) sports by charitable entities registered under section 12AA of the Income-tax Act.

Thus, services provided by way of training or coaching in recreational activities relating to arts or culture or sports by a charitable entity will be exempt from GST.

GST on management of educational institutions by charitable trusts

If trusts are running schools, colleges or any other educational institutions specifically for abandoned, orphans, homeless children, physically or mentally abused persons, prisoners or persons over age of 65 years or above residing in a rural area, such activities will be considered as charitable activities and income from such supplies will be wholly exempt from GST.

Meaning of the word rural area defined in said notification is rural area means the area comprised in a village as defined in land revenue records excluding the area under any municipal committee, municipal corporation, town area committee, cantonment board or notified area committee or any area that may be notified as an urban area by the Central Government or a State Government.

Import of Services

Also as per the entry no. 10 of Notification no.9/2017-Integrated Tax (Rate) dated 28.06.2017, if charitable trusts registered under Section 12AA of Income-tax Act receives any services from provider

of services located in non-taxable territory, for charitable purposes, such services received are not chargeable to GST under the reverse charge mechanism.

Services by and to Education Institutions (including institutions run by Charitable trusts)

If the trust is running school for the purpose which is not covered above (i.e. not coming within the scope of charitable activities as defined in the notification), income from such activity will not be exempt under notification no. 9/2017-Integrated Tax (Rate) or 12/2017-Central Tax (Rate), but will be exempt under entry 66 of notification no.12/2017-Central Tax (Rate). Entry 66 provides for exemption w.r.t supply by and to educational institutions and only the following services received by eligible educational institution are exempt:

- (1) Transportation of students, faculty and staff of the eligible educational institution.
- (2) Catering service including any mid-day meals scheme sponsored by the Government.
- (3) Security or cleaning or house-keeping services in such educational institution.
- (4) Services relating to admission to such institution or conduct of examination.

If such school or other educational institution gives property owned by such institution on rent to others, no exemption will be available for such services. Therefore, all services received by educational institutions managed by charitable trusts (for other than charitable activities, as defined) except those services mentioned above are taxable.

GST on arranging yoga and meditation camp by charitable trusts

Charitable trusts organise yoga camps or other fitness camps and they generally are not free for participants, as trusts charge some amount from the participants in the name of accommodation or participation. If trusts are arranging residential or non-residential yoga camps by receiving donation or other charges from the participants, these will not be considered charitable activities (as it is different from advancement of religion, spirituality or yoga). Since donation is received for participation, it will be considered commercial activity and it will definitely be covered under the GST. Similarly, if charitable trusts organise fitness camps in reiki, aerobics, etc., and receive donation from participants, such income that comes under health and fitness services and will also be taxable.

GST on running of public libraries by charitable trusts

No GST will be applicable if charitable trusts are running public libraries and lend books, other publications or knowledge- enhancing content/material from their libraries. This activity is specifically excluded by way of entry No. 50 of Notification No. 12/2017- Central Tax Rate (and is applicable for everyone, including charitable trusts); which means services by private libraries are not exempt. Thus, if donors of public library remain open to all and if it caters to educational, informational and recreational needs of its users and finance for such libraries can be provided from donation, subscription, from special fund created for this purpose or from combination of all such sources, it will be called public library and no GST will be applicable on such services.

GST on hospital managed by charitable trusts

Entry no. 74 of Notification No. 12/2017-Central Tax Rate (applicable to all persons including charitable trusts) exempts healthcare services at clinical establishment, an authorized medical professional or paramedics. As per clause (zg), health care services means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma. Therefore, all treatment or diagnosis or care for illness, injury, deformity, abnormality or pregnancy by a clinical establishment is covered. Such services provided by doctors and paramedics either provided as an employee (clinical establishment) or in their individual capacity is exempt. Transportation of patients to and from a clinical establishment is also exempt. The clinical establishment, as per clause (s), means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases.

So, if charitable trusts run a hospital and appoint specialist doctors, nurses and provide medical services to patients at a concessional rate, such services are not liable to GST. If hospitals hire visiting doctors/ specialists and these deduct some money from consultation/visit fees payable to doctors and the agreement between hospital and consultant doctors is such that some money is charged for providing services to doctors, there may be GST on such amount deducted from fees paid to doctors.

GST on services provided to charitable trusts

Services provided to charitable trusts are not out of ambit of GST. All services other than those specifically exempted provided to charitable trusts will be subject to GST.

GST on supply of goods by Charitable Trusts

There is no exemption for supply of goods by charitable trusts. Thus any goods supplied by such charitable trusts for consideration shall be liable to GST. For instance, sale of goods shall be chargeable to GST.