

**“COMPREHENSIVE ANALYSIS OF GOODS AND SERVICES TAX ON TRUSTS AND THEIR ASSOCIATED SERVICES”**

**Rites Goel**

Research Scholar, School of Law and Justice, Adamas University, Barasat West Bengal, India

**Prof. (Dr.) Ishita Chatterjee**

Professor, and Head of the Department, School of Law and Justice, Adamas University, Barasat West Bengal, India

**Abstract**

In India, most charitable, religious and educational activities are carried out under legal entity called 'Trusts'. The concept of trusts is widely understood to be one which runs non business activities and is established in the nature of a non-profit entity. Usually, the purpose of a trust is not to earn profits but to function for the upliftment of society at large.

We shall in this study try to analyse implication of taxation particularly GST on the charitable, religious and education activities carried on by a trust

**Key words: Goods and Services Tax (GST), Trusts, Compliance Requirements, Reverse Charge Mechanism, Trust-Related Services**

**Introduction**

To understand the implication of GST on the charitable, religious and education activities carried on by a trust or otherwise, it is of primary importance to first understand the legal concept of a trust and the treatment of the income of the same under the Income Tax Act, 1961.

According to Section 3 of Indian Trust Act, 1882 trust is defined as an obligations annexed to the ownership of the property, arising out of confidence reposed in, accepted by the owner, or declared and accepted by him, for the benefits of another or of another and the owner.

Public Trust is a trust which is created for the benefits of public at large or where the beneficiary is incapable of ascertainment is known as public trust. These trusts are essentially governed by Charitable and Religious Trust Act, 1920, The Religious Endowments Act, 1963, The Societies Registration Act, 1860, etc. but not governed by Indian Trust Act, 1882.

Private Trust is a trust created for the benefits of one or more individuals that can be particularly ascertained. These trusts are accustomed to act as per the provision of Indian trust Act, 1882. The Income Tax Act, exempts income earned by charitable, religious and education trusts if certain conditions are satisfied. One of the primary conditions is registration of the trust under section 12

AA or 12AB of the Income Tax Act, 1961. Income from trusts created for private purposes are however subject to income tax.

Under, the Income Tax Act, 1961 all income earned by a trust registered under section 12AA/ 12AB enjoys exemption from income tax if certain conditions are satisfied. However, as per GST Notification No 12/2017 Central Tax (Rate) dated 28<sup>th</sup> June, 2017, specific activities rendered by an income tax registered trust enjoy exemption. It is to be noted that to enjoy the GST Exemption, the entity must be registered under section 12AA or 12AB of the Income Tax Act, 1961. Such registered entities enjoy exemption in respect of the following services, subject to certain conditions. The two important conditions of exemption are a) The services must be rendered by a trust registered under section 12AA/ 12AB of the Income Tax Act, 1961 b) The service rendered must be by way of ‘charitable activity’

It is important to note that the term charitable activities has a limited definition and includes only the above mentioned activities. Only the services which fall within the four corners of the definition of charitable activities will be exempt from GST.

### **Hostel Accommodation by Trust — whether exempt?**

There was a confusion as to whether hostel accommodation services by a trust will fall under the definition of Charitable Activities and therefore, enjoy exemption from GST. GST Circular No. 32/06/2018-GST dated 12/2/2018 clarified that Hostel accommodation services do not fall within the ambit of charitable activities as defined in para 2(r) of notification No. 12/2017- CT(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.<sup>1</sup>

### **GST on Residential programmes or camps meant for advancement of religion, spirituality or yoga by religious and charitable trusts**

Clarification was sought regarding applicability of GST on residential programmes or camps meant for advancement of religion, spirituality or yoga where the fee charged includes the cost of boarding and lodging. Circular No. 66/40/2018-GST dated

26/9/2018 clarified that Residential programmes or camps where the fee charged includes cost of lodging and boarding shall also be exempt as long as the primary and predominant activity, objective and purpose of such residential programmes or camps is advancement of religion,

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<sup>1</sup> SI. No.14 of notification No. 12/2017-CT(Rate)

spirituality or yoga. However, if charitable or religious trusts merely or primarily provide accommodation or serve food and drinks against consideration in any form including donation, such activities will be taxable. Similarly, activities such as holding of fitness camps or classes such as those in aerobics, dance, music etc. will be taxable

### **Services rendered by Old Age Homes**

Services by an old age home to its residents aged 60 years or more against consideration upto Rs. 25,000 per month per member, provided that the consideration charged is inclusive of charges for boarding, lodging and maintenance. Therefore, only if all the above conditions are satisfied and the old age home is run by a trust registered under income tax, the services rendered by the old age home will be exempt from GST.

Renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a charitable or religious trust is exempt from GST. “Religious place” has been defined to mean a place which is primarily meant for conduct of prayers or worship pertaining to a religion, meditation, or spirituality;

The conditions for the exemption for renting are as follows: (i) In case of renting of rooms, charges should be below Rs. 1,000 per day; (ii) In case of renting of premises, community halls, kalyan mandapam or open area, charges should be below Rs. 10,000 per day; (iii) In case of renting of shops or other spaces for business or commerce, charges should be below Rs. 10,000 per month.

Services by way of training or coaching in sports by charitable entities registered under Section 12AA or 12AB of the Income Tax Act, 1961 would also be exempt from GST. The activities/ services detailed above are exempt only if provided by a trust registered under section 12AA or 12AB of the Income Tax Act, 1961. However, in addition to the above certain medical and educational facilities/ services provided are exempt from GST even if not provided by a registered trust.

The following medical services are exempt from GST whether provided by a registered trust or any other entity: a) Services by a veterinary clinic in relation to health care of animals or birds b) Services provided by way of transportation of a patient in an ambulance c) Services by way of health care services by a clinical establishment, an authorised medical practitioner or para- medics; The last point covers a very wide gamut of services. Any “healthcare services” provided by the following are exempt from GST: A) Clinical Establishment B) Authorised Medical Practitioner C) Para-Medics

The term “health care services” has been defined to mean 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 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, for any medical service to be exempt, the same must fall within the definition of health care services above.

Exemption is not available for cosmetic or plastic surgery unless the same is undertaken for restoring anatomy or functions of the body. Such healthcare services should be provided by either a clinical establishment, authorized medical practitioner or para-medics.

A “clinical establishment” has been defined to mean 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 recognised 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; Therefore, clinical establishment includes hospitals, clinics and diagnostic centres.

It is to be noted that the above exemption is not available in cases where room charges in the hospital/ nursing home exceeds Rs. 5,000 per day. This limit is not applicable to Intensive Care Unit (ICU)/Critical Care Unit (CCU)/Intensive Cardiac Care Unit (ICCU)/Neo natal Intensive Care Unit (NICU).

“Authorised medical practitioner” has been defined to mean a medical practitioner registered with any of the councils of the recognized system of medicines established or recognised by law in India and includes a medical professional having the requisite qualification to practice in any recognised system of medicines in India as per any law for the time being in force;

The recognised system of medicines has not been defined anywhere in the GST Law. As per The Clinical Establishments (Registration And Regulation) Act, 2010, “recognised system of medicine” means Allopathy, Yoga, Naturopathy, Ayurveda, Homoeopathy, Siddha and Unani System of medicines or any other system of medicine as may be recognised by the Central Government.

Therefore, the definition of clinical establishments and medical practitioner attains a very wide purport and includes not only Allopathy but also Yoga, Naturopathy, Ayurveda and Homeopathy. However, it is important to note that the medical practitioner must be registered with any of the councils of the above mentioned recognised systems of medicines for its services to be exempt from GST.

Hiring of Doctors as consultants instead of employees. There was a query as to levy of GST in cases where Hospitals hire senior doctors/consultants/ technicians independently, without any contract of such persons with the patient; and pay them consultancy charges, without there being any employer employee relationship. Additionally these doctors entered into a contract with the

hospital and not directly with the patient. It clarified from a circular<sup>2</sup> that Health care services provided by a clinical establishment, an authorised medical practitioner or para-medics are exempt. Therefore, Services provided by senior doctors/consultants/ technicians hired by the hospitals, whether employees or not, are healthcare services which are exempt

GST on Foods supplied to patients another query related to hospitals was the taxability of food supplied to patients. Health care services provided by the clinical establishments will include food supplied to the patients; but such food may be prepared by the canteens run by the hospitals or may be outsourced by the Hospitals from outdoor caterers.

It is clarified by a circular<sup>3</sup> that Food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare and not separately taxable. Other supplies of food by a hospital to patients(not admitted) or their attendants or visitors are taxable.

### **Education Services exempt from GST**

In case of Education Services, certain services provided by educational institutions is exempt from GST. Also, certain services provided to education institutions is also exempt from GST. An “educational institution” has been defined to mean an institution providing services by way of -(i) pre-school education and education up to higher secondary school or equivalent; (ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force; (iii) education as a part of an approved vocational education course;

There are three limbs in the above definition. First is school till Class XII. Second refers to other qualifications after school recognised by law. Third is an approved vocational course. An “approved vocational education course” has been defined to mean - (i) a course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Training or State Council for Vocational Training offering courses in designated trades notified under the Apprentices Act, 1961 or (ii) a Modular Employable Skill Course, approved by the National Council of Vocational Training, run by a person registered with the Directorate General of Training, Ministry of Skill Development and Entrepreneurship;

Following services provided by all three educational institutions are exempt from GST a) services provided to its students, faculty and staff b) Entrance Fee for conduct of entrance examination. The following services provided to a school is exempt from GST Transportation of students, faculty and staff Catering, including any mid-day meals scheme sponsored by the Government Security

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<sup>2</sup> GST Circular No. 32/06/2018-GST dated 12/2/2018

<sup>3</sup> GST Circular No. 32/06/2018-GST dated 12/2/2018

or cleaning or house-keeping services performed in the school. It is important to note that the above are exempt only if provided to a school and not to any other educational institute.

The following service provided to all educational institutions is exempt from GST Services relating to admission to, or conduct of examination by, such institution; Following Services provided to educational institutions other than school and vocational education course are exempt from GST a) supply of online educational journals or periodical taxability of Services provided by Industrial Training Institutes (ITI) Services are vocational training provided by private ITIs in designated trades and in other than designated trades. Entrance fees for examination and services relating to admission to or conduct of examination.

It is further clarified<sup>4</sup> that services provided by a private ITI in respect of designated trades notified under Apprenticeship Act, 1961 are exempt from GST as they fall within the definition of 'approved vocational education course' (defined supra). However, services provided by a private ITI in respect of other than designated trades would be liable to pay GST and are not exempt.

With regard to the second issue it was clarified that in case of designated trades, services provided by a private ITI by way of conduct of entrance examination against consideration in the form of entrance fee will also be exempt from GST. Further, in respect of such designated trades, services provided to an educational institution, by way of, services relating to admission to or conduct of examination by a private ITI will also be exempt. It was further clarified that in case of other than designated trades in private ITIs, GST shall be payable on the service of conduct of examination against consideration in the form of entrance fee and also on the services relating to admission to or conduct of examination by such institutions, as these services are not covered by the exemption.

It was also clarified that as far as Government ITIs are concerned, services provided by a Government ITI to individual trainees/students, is exempt<sup>5</sup> as these are in the nature of services provided by the Central or State Government to individuals. Such exemption in relation to services provided by Government ITI would cover both - vocational training and examinations conducted by these Government and ITIs.

### **Applicability of GST on Short Duration programs conducted by the IIMs**

It was clarified<sup>6</sup> that w.e.f 31.1.2018, all long duration programs (one year or more) conferring degree/diploma as recommended by Board of Governors as per the power vested in them under the IIM Act, 2017 including one year Post Graduate Programs for Executives will be exempt from GST. However, all short duration executive development programs or need based specially

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<sup>4</sup> *GST Circular No 55/29/2018 dated 10.8.2018*

<sup>5</sup> *SI. No. 6 of 12/2017-CT(R) dated 28.06.2017*

<sup>6</sup> *Circular No 82/01/2019- GST dated 1.1.2019*

designed programs (less than one year) which are not a qualification recognized by law will not be exempt from GST.

### **Conclusion**

It is amply clear that not all services offered by charitable trust are exempt or out of the area of GST. There are certain services which are specifically brought to tax for charitable trust also so that there is no siphoning of taxes in the garb of trust.

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