

GST ON GRANT AND DONATION

◆ Legal Series Vol. XIV ◆ Issue 4

For private circulation only

ANALYSING THE RECENT ADVANCE RULING BY MAHARASHTRA AUTHORITY



Standards & Norms

Resource support on NGO Governance, Accounting and Regulations



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INTRODUCTION:

1.01 The applicability of Goods and Service Tax (GST) on grants and donations under specific circumstances was considered by the Maharashtra Authority for Advance Ruling herein after referred to as MAAR, in the case of *M/s. Jayshankar Gramin Va Adivasi Vikas Sanstha* vide no. GST-ARA-97/2019-20/B-91 dated 10.11.2021, provided as **Annexure 1**.

1.02 In this case, the issues raised by the applicant and the Ruling are briefly summarized as under:

- Whether the activity of supporting orphan children and destitute women is considered as an exempt “Charitable Activity” for the purpose of GST where a very small number of activities are exempt as per Notification No. 12/2017, dated 26.06.2017. The definition of “Charitable Activity” as per this circular is provided in **Annexure 2**. The MAAR ruled that the impugned activities were not covered under the definition of “Charitable Activity” for the limited purpose of GST. It may be noted that “Charitable Activity” even if not exempt under the aforesaid notification can only be subjected to GST if it is towards “furtherance of business” under GST Act or any benefit is provided to the donor.
- It was further ruled that a Grant was different from the donation as a grant is subject to services at the directions of the grant making Body and therefore, fulfilled all the ingredients of a taxable service under GST i.e. existence of “supply”, “consideration” and “business activity”. It was observed that it would not make any difference whether profit motive existed or not.
- The petitioner in its petition seems to have cited the legal principles laid down by the Hon’ble Supreme Court in ***Apitco Ltd. v. Commissioner of Service Tax, Hyderabad [2012] 26 taxmann.com 213 (SC)*** (explained below). The MAAR seem to have completely ignored the law explained by Supreme Court in this regard and therefore, this ruling may not stand the legal scrutiny in higher forums.

1.03 The analysis and our understanding is as under:

- The advance ruling is basically opining that Donations (which are unconditional and voluntary in nature) received by charitable institutions are out of the purview of GST whereas on the other hand Grant (where the donor supports

for specific predetermined activities) shall be subject to 18% GST unless the proposed activities are specifically notified as “Charitable Activity” for the purposes of GST. This ruling in our opinion is not sustainable and is not based on correct understanding and appreciation of the legal provisions and the judicial precedence particularly the Supreme Court ruling in *Apitco (supra)*.

- This Ruling presumes that a grant does not remain in the nature of donation if a philanthropy is mutually agreed between the donor and the donee organisation which is legally incorrect and unsustainable. In the Circular No. 116/35/2019-GST, F. No. 354/136/2019-TRU dated 11th October 2019 issued by Ministry of Finance, Government of India (Provided as **Annexure 3**) it was clarified that for Exemption from GST three conditions are required to be fulfilled:
 - (i) Gift or Donation is made to a charitable organisation.
 - (ii) The purpose is philanthropic (i.e. it leads to no commercial gain).
 - (iii) There is no advertisement of the donor.

This Circular also states that in case of a donation there should be no obligation in the nature of *quid pro quo* on the part of the recipient of the donation or gift for ‘supply of service’. The ‘supply of service’ apparently does not include the philanthropic purpose (mutually agreed upon) for which the donation was made without any commercial gain to either the donor or the donee.

This Advance Ruling ignores the fact that the services rendered are not in the nature of *quid pro quo* and also does not result in commercial gain to either the donor or the donee.

- Further attention is drawn on circular 127/9/2010 – ST dated 16.08.2010 (provided as **Annexure 4**) under erstwhile Service Tax Law wherein in the context of donations and grant-in-aid it was clarified that unless there is a direct nexus between the donor and the specific beneficiary, a grant or donation cannot be taxed as there is no relationship other than universal humanitarian interest.
- The Advance Ruling also ignores the fact that project grants for specific purpose are legal obligation and it is a settled law that legal obligations cannot be treated as business receipts even for commercial organisations. In the case of *CIT v. Bijli Cotton Mills (P.) Ltd.* [1979] 116 ITR 60 Supreme Court debated the issue of certain charity/legal obligation being collected as a part of a

commercial invoice. In this particular case the term 'Dharmada' has been used which means 'towards charity'. The court held that any money received from the customers towards charity was under a legal obligation to be spent for a specific purpose and therefore it could not be treated as a trading receipt.

- This Advance Ruling is applicable only on the petitioner and the concerned Assessing Officer and would not be binding on any other entity or Assessing Officer in the country.

SUPREME COURT IN APITCO CASE

2.01 *In the case Apitco Ltd. v. Commissioner of Service Tax, Hyderabad [2012] 26 taxmann.com 213 (SC) wherein it was held by the Apex Court that if grants-in-aid received from Central and State Governments for implementation of welfare schemes for various sections of society are totally utilized for such purpose, there is no service provider-client relationship between assessee and Government. Only utilization of money for agreed purposes will not result in service provider-client relationship; a client must not only pay the expenses of the service but also the consideration or reward for the service to the service provider. Supreme Court actually affirmed the CESTAT, Bangalore Bench in the case of APITCO Ltd. vs. Commissioner of Service Tax, Hyderabad [2010] 29 STT 262 (Bangalore - CESTAT)/[2010] 20 STR 475 (Bangalore - CESTAT) where the Bangalore CESTAT had held that:*

"It was not in dispute that the assessee-company had implemented welfare schemes for the Central and State Governments for the benefit of the poor or otherwise vulnerable/weaker sections of the society and collected grants-in-aid from the Governments concerned. It was not in dispute that these grants-in-aid had been totally utilized for implementing the welfare schemes. Nothing over and above these grants-in-aid was received by the assessee from any of the Governments. In other words, the assessee did not receive any consideration for 'any service' to the Governments. Therefore, it was to be held that, in the implementation of the Governmental schemes, the assessee as implementing agency did not render any taxable 'service' to the Government. The department seemed to be considering the Governments to be 'clients' of assessee. The question now was whether there was 'service provider-client' relationship between the assessee and the Governments. Here again, the nature of the amounts paid by the Governments to the assessee was decisive. A client must not only pay the expenses of the service but also the consideration or reward for the service to the service provider. Admittedly, in the

instant case, there was no payment, by any Government to the assessee, of any amount in excess of what was called 'grant-in-aid'. Thus, any service provider-client relationship between the assessee and the Governments, was ruled out. It was true that the assessee had executed the Governmental schemes mainly through its engineers (technocrats) but this was not enough for the revenue to bring the assessee within the ambit of 'Scientific or technical consultancy'.

Further, the above case was referred and appeals were allowed in similar lines by Delhi CESTAT in case of **Madhya Pradesh Consultancy Organisation Ltd. vs C.C.E., Bhopal [2017 (4) G.S.T.L. 100 (Tri. - Del.)]** wherein it was held that-

*We have perused the various documents submitted by the appellant relating to the scope of activities and the method of payment received from various departments/ Ministries of the Government. The project works assigned to the appellant are in the nature of various welfare activities carried out by the Government in public interest. These are counselling, re-training and redeployment of rationalized employees of Central Public Sector Enterprises, and Entrepreneurship Development Programme with reference to production of specific products, skill development training programme through Science and Technology etc. The appellants were to submit full records of the expenditure with reference to each project to the concerned Ministry. Any surplus of the amount, given as grant, should be returned to the Government. We find that the decision of the Tribunal in *Apitco Ltd. (supra)*, as above, is squarely applicable to the facts of the present case and accordingly, we hold that the appellants are not liable to service tax in respect of these activities carried out, by using the grant-in-aid given by the various Ministries/departments of the Government. [Para 12]*

In our opinion if the Grant contract is based on contribution to be utilised entirely without any possibility of profit or loss or any element of adventure, then such contract are essentially trusteeship contracts in the nature of legal obligation, therefore the question of such a contract being treated as business activity (with or without profit motive) does not arise. For commercial contract it is necessary to create Client – Service Provider Relationship which implies that the client must not only pay the expenses of the service but also the consideration or reward for the service to the service provider. It seems that the Advance Ruling has made an unassailable presumption that all grant contracts shall be treated as “business” unless the grant is

made for specifically exempted activity under Notification No. 12/2017, dated 26.06.2017 provided in **Annexure 2**. The exempt Charitable Activity under the Notification implies exemptions for those activities which otherwise would have been treated as taxable activity. It would not apply to those activities which are outside the scope of GST.

SCOPE OF SUPPLY AND LEVY OF GST

- 3.01** The definition of supply includes **all forms of supply** of goods or services or both **made or agreed to be made for a consideration** by a person **in the course or furtherance of business**.
- 3.02** GST might be leviable on the grants received, if the following conditions of supply definition is satisfied:
- (i) There should be a supply of goods or services;
 - (ii) It should be made for a consideration; and
 - (iii) It should be made in the course or furtherance of business.

GST is leviable on supply of goods or services or both except on supply of alcoholic liquor for human consumption. In order to treat a transaction as taxable under GST, it should be within the scope of supply under GST.

WHETHER IMPLEMENTATION OF PROJECT AGAINST GRANTS COULD BE TREATED AS CONSIDERATION

- 4.01** The question arises whether the implementation of a program by a charitable organisation can be treated as consideration. For that we should first study the definition of 'Consideration' under section 2(31) of the CGST Act, 2017 which is as under:

“consideration” in relation to the supply of goods or services or both includes—

*(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, **whether by the recipient or by any other person** but shall not include any subsidy given by the Central Government or a State Government;*

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government: Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;"

From the definition of consideration, it appears that the payment for supply of goods or services, made by any person other than recipient would also be treated as consideration under GST. In other words, even if the beneficiaries are not being charged for the services received, still GST will be levied if somebody else is paying for the services. Therefore, the only way a grant cannot be treated as Consideration is to establish that such services are not yielding any commercial benefit to both donor and the donee and are purely philanthropic in nature.

In the Circular No. 116/35/2019-GST, F. No. 354/136/2019-TRU dated 11th October 2019 issued by Ministry of Finance, Government of India (Provided as **Annexure 3**) it was clarified that for Exemption from GST three conditions are required to be fulfilled:

- (i) Gift or Donation is made to a charitable organisation.
- (ii) The purpose is philanthropic (i.e. it leads to no commercial gain).
- (iii) There is no advertisement of the donor.

This Circular also states that in case of a donation, there should be no obligation in the nature of *quid pro quo* on the part of the recipient of the donation or gift for 'supply of service'. The 'supply of service' apparently does not include the philanthropic purpose (mutually agreed upon) for which the donation was made without any commercial gain to either the donor or the donee.

- 4.02** Further attention is drawn on circular 127/9/2010 – ST dated 16.08.2010 (provided as **Annexure 4**) under erstwhile Service Tax Law wherein in the context of donations and grant-in-aid it was clarified that unless there is a direct nexus between the donor and the specific beneficiary, a grant or donation cannot be taxed as there is no relationship other than universal humanitarian interest. The relevant extract from the circular is provided as under:

“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. In such a situation, service tax is not leviable, since the donation or grant-in-aid is not linked to specific trainee or training.”

- 4.03** 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 could be established, the amount cannot be subjected to GST. When the funds are received for example for eradicating poverty in India, helping poor farmers and spreading awareness to all the customers in India, **there is no supply of goods/ service taking place to the donor**, but services are provided to the people on grounds of universal humanitarian interest. In our considered view, these grants would be kept out of GST levy.
- 4.04** GST would be levied if the agreement with grantor provides that promotion of name/ logo of donor is to be given in exchange for grants/ funds. In such scenario, there could be elements of services of brand promotion and treated as taxable service and GST could be demanded on the entire grant received until and unless judicial support on these aspects is in place.
- 4.05** Therefore, the activity of publicising the funding operations of donor and mentioning the donor’s financial contribution and logo or emblem in all advertising activities, conferences, vehicles, press releases, websites, etc., may be treated as supply of advertising or brand promotion services.
- 4.06** Further, to levy GST grant must be linked to a **direct benefit which accrues to donor**. If the benefit accrues to public in general, thus leading to greater prosperity for people in India, then the grant would not be liable to GST.

WHAT IS A “CHARITABLE PURPOSE” UNDER GST?

5.01 The term “charitable purpose” has not been defined under the GST Act. However, vide a notification no 12/2017 the term “charitable activity” has been explained. Further the term “charitable activity” has a very limited connotation under GST vide the said Notification. As per this notification the following activities under GST are to be considered as “Charitable activities” –

- o public health by way of:-
 - care or counselling of terminally ill persons or persons with severe physical or mental disability
 - persons afflicted with HIV or AIDS
 - persons addicted to a dependence-forming substance such as narcotics drugs or alcohol
- o public awareness of preventive health, family planning or prevention of HIV infection;
- o advancement of religion, spirituality or yoga;
- o advancement of educational programmes or skill development relating to,
 - abandoned, orphaned or homeless children
 - physically or mentally abused and traumatized persons
 - prisoners; or
 - persons over the age of 65 years residing in a rural area; preservation of environment including watershed, forests and wildlife.

Further, under GST a “Charitable Organisation” has not been defined however to claim an exempt charitable activity under GST, a Charitable Trust or NPO must satisfy the following two conditions: -

- The entity must be registered under Section 12AA of the Income Tax Act, 1961
- The services provided by the entity must be charitable in nature as defined under Notification no 12/2017.

ARE ACTIVITIES OUTSIDE THE RESTRICTED DEFINITION OF CHARITABLE ACTIVITY UNDER NOTIFICATION NO 12/2017 TAXABLE

6.01 No, it may be noted that GST is an supply based tax and its applicability does not depend on the nature of the Organisation. In other words if a business activity is conducted by charitable organisation it will not enjoy any immunity under GST.

GST Law being an Indirect Tax, it applies on specific economic activities which could be treated as towards “*furtherance of business*” under GST. Therefore, the NPOs which are not engaged in activities which are covered within the definition of *charitable activity* shall be subjected to GST provided their activities have a component of supply as defined under the GST Act.

WHETHER GST IS APPLICABLE ON CSR PROJECTS UNDERTAKEN BY CHARITABLE ENTITIES

7.01 It depends upon the nature of contract. There the various aspects to be examined for CSR Projects. Few are as under:

- A charitable organisation may work as a contractor on behalf of a corporate and raise invoices against the deliveries made. In such cases GST will be applicable based on the type of supply and the applicable provisions. There might be certain type of transaction which may be specifically exempt for instance construction of toilets for sanitation and public convenience.

7.02 A charitable organisation may work as a trustee or a implementing partner on behalf of a corporate. However in such cases the NPO should entirely utilise the grant amount for agreed purposes. In such cases GST will not apply. In the case *Apitco Ltd. vs. Commissioner of Service Tax, Hyderabad 2011 (23) S.T.R. J94 (SC)* it was held by the Apex Court that if grants-in-aid received are totally utilized for the intended welfare purpose, there is no service provider-client relationship between assessee and donor. In other words, whenever a corporate gives grant to a charitable organisation, it should be ensured that there is no service provider-client relationship. It is trusteeship contract and it has to be

utilised as per a pre-approved budget. Such budget should only confine to the proposed activities. In this case the value of CSR project would not be forming part of turnover in the hands of the charitable entity and hence beyond the scope of supply and GST.

SECTION 2(17)(A) OF CGST STATES THAT THE TERM BUSINESS SHALL INCLUDE ACTIVITIES EVEN WITHOUT PECUNIARY BENEFIT

8.01 NPOs may carry out different activities with or without revenue. In GST, for any activity to be considered as supply, it has to first pass the test of business under section 2(17)(a) of the Act and should also be covered in scope of supply under section 7 of the Act.

Section 7 provides that supplies shall include all forms of goods and services which are for a consideration and "in the course or furtherance of business".

Section 7 further provides that supplies shall include all forms supply such as sale, exchange, transfer, barter, lease, rental, licensing and disposal of goods or services... for a consideration and "in the course or furtherance of business". Implying there by that activity of sale, exchange, transfer etc. can be treated as supply only when it occurs "*in the course or furtherance of business*".

*Reference may also be made to erstwhile VAT laws where liability was casted on dealers. A dealer is one who is in the **business** of buying and selling. Meaning thereby that the activities of buying and selling of goods by a person who is into business of buying and selling of goods would only be a leviable transaction.*

Simultaneously section 2(17)(a) of GST Act provides that business shall include "*any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit*".

A conjoint reading of both the provisions implies as follows:

- The scope of GST shall cover all supplies which are for a consideration and "*in the course or furtherance of business*".

- Business shall mean *any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit.*
- As a result, if the economic activity of an NPO is covered under any of the following i.e. *any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity*, then such activity shall be subject to GST even if it is without profit motive or for inadequate consideration.
- There is nothing in the above two sections to suggest that an activity having an economic component shall be treated as business. An activity can only be treated as business if it has an element of i.e. *any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity.*
- In this context it may be noted that the definition of charitable activity is very narrow for the purposes of GST and therefore the only saving grace is to establish that such activity is not *“in the course or furtherance of business”*.

ACTIVITIES WHICH COULD BE CONSIDERED AS BUSINESS ACTIVITY

9.01 Services supply made by the NPO may be in any one or more of the following:

- outside the coverage of definition of Goods or services,
- outside the coverage of scope of supply,
- exempt or Non-taxable supplies,
- zero rated supplies
- or taxable supplies.

Grants are outside the coverage of scope of supply because there is no consideration involved unless the agreement provides for any benefit to the donors.

The moot point of debate is the implication of the terms carrying on or in furtherance of business read with the specific definition of the term Business under GST.

As per our understanding, business like activities of an NPOs may fall under following four categories:

- (i) The primary activity carried on the basis of commercial principle with or without profit motive (micro credit, school. Health etc)
- (ii) To achieve the primary objectives of the organisation, incidental business activities are being carried by NPOs. For example an NPO engaged in engaged in capacity building may undertake business activities involving beneficiaries. Or a school may sell books and uniform along with primary objective of providing education.
- (iii) Business activities which are not directly related with the primary objects. In other words, it is an independent business activity for revenue generation.
- (iv) Business held as a property of the trust

It is apparent that GST is applicable for last three type of business activities. The first type of business activity which is the primary objective as well as activity of the NPO shall be subjected to GST only if it is towards "*in the course or furtherance of business*".

Even for the first category of business activity, the intent of the statutory authorities seems to be to bring all such activities under GST unless specifically exempted. For instance under HSN Code 9992 *Education Services* are subject to 18% GST, the only rationale for such notification could be that all educational services have been treated within the scope of GST unless specifically exempted. The question arises if an education service is provided in a manner that it cannot be considered as "*in the course or furtherance of business*", then will it be under the mandate of the authorities to either exempt or tax the same under GST.

ARE ADVANCE RULING BINDING ON OTHER ENTITIES AS WELL AS ASSESSING OFFICERS

10.01 Any Advance Ruling is applicable only on the petitioner and the concerned Assessing Officer and would not be binding on any other entity or Assessing Officer in the country. Under section 103 of The Central Goods and Services Act, 2017 (CGST Act) it is provided that Advance Ruling shall apply only to the specific petitioner and the concerned Assessing Officer. The text of section 103 is reproduced as under:

“Section 103 – Applicability of advance ruling

- (1) The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only—*
 - (a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of section 97 for advance ruling;*
 - (b) on the concerned officer or the jurisdictional officer in respect of the applicant.*
- (2) The advance ruling referred to in sub-section (1)2 and sub-section (1A) shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.”*

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MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.
(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

- (1) Shri. Rajiv Magoo, Additional Commissioner of Central Tax, (Member)
 (2) Shri. T. R. Ramnani, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id	URD
Legal Name of Applicant	M/s. Jayshankar Gramin Va Adivasi Vikas Sanstha
Registered Address/Address provided while obtaining user id	1 st Floor, Madhav Parvati Complex, Veer Savarkar Marg, Sangamner, Dist-Ahmednagar.
Details of application	GST-ARA, Application No. 97 Dated 21.01.2020
Concerned officer	Ahmednagar Division, Commissionerate, Nasik
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A Category	Service Provision
B Description (in brief)	Services to Orphanage, destitute women.
Issue/s on which advance ruling required	➤ Whether applicant is required to be registered under the Act.
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

Outward No. **NO.GST-ARA- 97/2019-20/B- 91**

dated **10.11.2021**

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act" respectively] by M/s. Jayshankar Gramin Va Adivasi Vikas Sanstha, the applicant, seeking an advance ruling in respect of the following questions.

1. Whether applicant is required to obtain registration under the Maharashtra Goods and Service Tax Act, 2017?
2. If answer to above question is affirmative, whether the applicant is liable to pay GST on the amounts received in the form of Donation / Grants from various entities including Central Government and State Government.
3. If answer to above question 2 is affirmative, what will be the rate at which the GST would be charged?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same

provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

2. FACTS AND CONTENTION – AS PER THE APPLICANT

- 2.1 The applicant is Charitable trust registered under Maharashtra Public Charitable Trust Act 1950 w.e.f. 15-02-1993. The Trust, Jayshankar Gramin VA Adivasi Vikas Sanstha Sangamner (hereafter referred as trust) is also registered under Societies Act vide registration number Maha/2041/92 w.e.f. 23/12/1992. The applicant is registered under section 12AA of the Income Tax Act 1961 w.e.f. 08/10/2009.
- 2.2 The trust has its head office at 1st floor, Madhav Parvati complex, veer savarkar Marg, Sangamner. The destitute home for children is located at Akole bypass road, Sangamner.
- 2.3 The trust undertakes supply of services to 50 orphans and homeless children by way of shelter, education, guidance, clothing, food and health for the Women and Child welfare. The Govt of Maharashtra women and child welfare department pays a sum of Rs. 2,000/ per month per child. Other expenses for children are made from donations. The trust is also registered under Income Tax Act 1961 as Charitable trust vide registration number PN/CIT I/REGN./12A (a)/63/2009-10/5304. The trust is also registered under section 80G (5) of Income Tax Act.
- 2.4 The trust also render services to destitute women who are litigating divorce or homeless or the victim of domestic violence. Central Government also gives grants through Women and Child Welfare Ministry for awarding shelter, food, and medical facilities, clothing etc., to destitute women who are victims of domestic violence or are divorcee or are homeless and also to rape victims. The trust represents them before legal forums, including lodging FIR at police stations against the culprits, The trust also arrange for counselling them through expert counsellors to bring them out of the trauma and help them to lead normal life. These victim women's are sent by police stations or anybody who knows that women's are victims of violence.
- 2.5 Major source of income of the trust is from Government of Maharashtra's Woman and Child Welfare ministry and also the Central Government and other donations from public. The total funds received from Maharashtra Government and other sources in the financial year 2018-19 are as under:

Year	Nature of source of income	Amount
2018-19	Grants, Donations and other income	Rs. 26,63,960 /-

- 2.6 As per the provisions of Section 9 of the CGST Act, basically the incidence of GST is on supply' as defined under Section 7 (1) of the CGST Act, 2017. The two most important terms used in definition of Supply are 'consideration' and business'. **Consideration** has been defined under Section 2(31) as any payment made or to be made, in response to the supply of Goods or services or both, whether by the said person or by any other person, but shall not include any subsidy given by Central or State Government.
- 2.7 In this connection a Circular bearing No. 127/9/2010-ST, dated 16-8-2010 was issued. The clarification in this regard was received for whether the Service tax on commercial training and coaching - Whether donation' is 'consideration'. The Text of the Circular is as follows:

1. A representation has been received seeking clarification whether donations and grants-in-aid received from different sources by a charitable Foundation imparting free livelihood training to the poor and marginalized youth, will be treated as "consideration" received for such training and subjected to service tax under 'commercial training or coaching service'.
2. The matter has been examined. 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.
3. 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. In such a situation, service tax is not leviable, since the donation or grant-in-aid is not linked to specific trainee or training.

2.8 Further, In the case of APITCO vs Commissioner of Service Tax, Hyderabad, the SC upheld the decision of Tribunal that assessee company implemented welfare schemes consisting of training, technology facilitation, etc. for the Government for the benefit of the vulnerable / weaker sections of the society and grant in aid received from the Government was utilized for this purpose alone. Tribunal had held that in implementation of the Governmental schemes, the assessee as implementing agency did not render any taxable "service" to the government. The Judgment further stated that the department seems to be considering the Governments to be 'client'. The question now is whether there was "service provider-client" relationship between the assessee and the governments. Here, again, the nature of the amounts paid by the governments to the assessee is decisive. A client must not only pay the expenses of the service but also the consideration or reward for the service to the service provider. Admittedly, in the present case, there was no payment, by any government to the assessee, of any amount in excess of what is called "grant-in-aid". Thus any service provider-client relationship between the assessee and the governments is ruled out.

2.9 The trust has not obtained registration under MGST Act, 2017 on the following grounds.

- (i) The activity of supply by the applicant trust is fully exempted from levy of tax.

The Notification No. 12 of 26-06-2017 serial number 1 HSN 99 table is as under:

Sl. No.	Chapter, Section, Heading, Group Or Service Code (Tariff)	Description of Services	Rate (per cent)	Condition
(1)	(2)	(3)	(4)	(5)
1	Chapter 99	Services by an entity registered under section 12AA of the Income-tax Act, 1961 (43 of 1961) by way of charitable activities:	Nil	Nil

2.10 Notification (supra) sr, no 1 exempts the services by trust. The applicant trust is registered under section 12AA Income Tax Act 1961. Section 23 of the MGST Act 2017 exempts the person from registration whose supply of goods and services are exempt from MGST Act.

2.11 From cumulative reading of the above factors, Hon'ble Advance ruling authority be pleased to hold that applicant trust is not liable for registration under MGST Act 2017 nor is liable to pay GST on the Grants received from Central / State Government. Also, the NGO is not liable to pay GST on the Donation received by the NGO for carrying out the Charitable Activity.

03. CONTENTION – AS PER THE CONCERNED OFFICER:

Submission on 27.11.2020:-

3.1 Applicant is Charitable Trust registered under Maharashtra Charitable Trust Act, 1950. They are also registered under the Society Act and Income Tax Act, 1961 as a charitable trust. The trust is also registered under section 80 G(5) of Income Tax Act along with section 12AA of the Act.

3.2 Applicant undertakes supply of services to 50 orphans and homeless children by way of shelter, education, guidance, clothing, food and health for the Woman and Child welfare ministry of Govt. of Maharashtra. The Govt. of Maharashtra pays sum of Rs. 2000/- per month per child in form of Grants and other expenses for children are made from donations Vide letter dated 12/03/2020, applicant also informed that they are also rendering services to destitute women who are litigating divorce or homeless or the victim of domestic violence. They represent them before legal forms, they also arrange for counseling them through expert counselors. These services are being rendered to destitute women at One Stop Crises Center, Near Ladies Observation Home, Nasardi Bridge, Nashik-422001. No such service is being provided at Sangamner, Dist. Ahmednagar, as they are authorized to provide such service in Nashik Jurisdiction only.

3.3 As per the serial no.1 of notification no. 12/2017-Central Tax (Rate) dated 26-06- 2017 provides that services by an entity registered under section 12AA of Income-tax Act, 1961 (43 of 1961) by way of charitable activities are exempted from the tax.

“Charitable activities” means activities relating to:-

- (i) Public health by way of,-
 - (A) Care or counseling of
 - (I) Terminally ill person or person with severe physical or mental disability;
 - (II) Person 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 preventing 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) Person over the age of 65 years residing in a rural area:
 - (iv) Preservation of environment including watershed, forests and wildlife;

3.4 From the information provided by the applicant, it cannot be concluded as to whether the services provided to orphan and homeless children is specifically for advancement of educational

programmes or skill development of orphan or homeless, as stated in point (iii) of "Charitable activities" means. Thus, it cannot be concluded that the services provided by the applicant are charitable services only.

- 3.5 Applicant vide its letter dated 12/03/2020 also informed to jurisdictional office that they are also rendering services to destitute women who are litigating divorce or homeless or the victim of domestic violence. They represent them before legal forms, they also arrange for counseling them through expert counselors. These services are being rendered to destitute women at One Stop Crises Center, Near Ladies Observation Home, Nasardi Bridge, Nashik-422001.
- 3.6 From the above said information provided by the applicant, it cannot be concluded as to whether the services provided to destitute women who are litigating divorce or homeless or the victim of domestic violence are in relation to the sub point B of point (iii) of "Charitable activities" means or otherwise.
- 3.7 In view of the above, classification of the services would be decided on basis of Specific nature of the services provided by the applicant. Further, as per the details submitted the activities carried out by the appellant are specifically not covered under the exemption Notification serial no.1, Chapter 99 of notification no. 12/2017-Central Tax (Rate) dated 26-06-2017 though they are registered under section 12AA of Income-tax Act, 1961(43 of 1961) by way of charitable activities, thus it appears that all the activities of the applicant are not covered under said notification. Thus on the basis of details submitted by the applicant it cannot be concluded that they are not liable to take registration.



04. HEARING

- 4.1 Preliminary e-hearing in the matter was held on 03.12.2020. Shri.Rajendra Hase, Chairman appeared, and requested for admission of the application. Jurisdictional Officer was absent.
- 4.2 The case was admitted and Final Hearing was held on 07.09.2021. Shri Durgesh Kalantri, C.A., appeared and made oral and written submissions. Jurisdictional Officer Shri B. Jadhav, Ahmednagar also appeared and made submissions.
- 4.3 The matter was heard.

05. OBSERVATIONS AND FINDINGS:

- 5.1 We have considered the submissions made by the Applicant as well as the submissions made by the jurisdictional officer. We have also considered the issues involved and the facts of the matter. The applicant has sought advance ruling in respect of the questions with regard to the requirement of registration under the GST Act, the taxability of amounts received in the form of Donation / Grants from Central Government or State Government as the case may be and the rate of tax on such supply.
- 5.2 The Applicant is a Charitable Trust registered under section 80 G (5) of Income Tax Act and also under section 12AA of the Income Tax Act. The Applicant is also registered under Maharashtra Charitable Trust Act, 1950 vide Registration Number F-2378 w.e.f. 15-02-1993, and under the Societies Registration Act, 1860.
- 5.3 The applicant has submitted that, they are supplying services to 50 orphans and homeless children by way of shelter, education, guidance, clothing, food and health, for which the

Department of Women & Child Welfare, Government of Maharashtra pays a sum of Rs. 2,000/ per month per child. Other expenses for children are covered from donations received. The applicant also renders services to destitute women who may be litigating divorce or are homeless or are victims of domestic violence. The Central Government also gives grants to the applicant, through the Women and Child Welfare Ministry for providing shelter, food, and medical facilities, clothing etc., to such destitute women which may also include rape victims. The applicant represents such destitute women before legal forums, at police stations and arranges for counselling the said women through expert counsellors to bring them out of the trauma and help them to lead normal life.

- 5.4 Applicant's major sources of income are receipts from the Government of Maharashtra's Woman and Child Welfare ministry and also the Central Government in the form of grants. Applicant also receives donations from public.
- 5.5 The applicant is claiming exemption under Sr. No. 1 of Notification No. 12/2017 dated 28-06-2017 which provides exemption from tax to Services supplied by an entity registered under Section 12AA of the Income-Tax Act, 1961 (43 of 1961) by way of charitable activities.
- 5.6 We find that the applicant is registered under Section 12AA of the Income-Tax Act, 1961 (43 of 1961) as submitted by them. To avail the benefit of exemption under the said notification the services supplied should be by way of charitable activities.
- 5.7 The words "charitable activities" are defined in the said notification as, 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
- 5.8 The above said notification exempts the charitable trusts available for charitable activities more specific. While the consideration from only those activities listed above is exempt from GST, while 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.
- 5.9 We need to find out whether the activities undertaken by the applicant are covered under the definition of charitable activities or not.



- 5.10 The applicant has loosely submitted that they are supplying services to 50 orphans and homeless children by way of shelter, education, guidance, clothing, food and health for the Women and Child Welfare Department, Government of Maharashtra. They have nowhere mentioned or given details as to how their services can be treated as charitable activities. Only advancement of educational programmes or skill development relating to abandoned, orphaned or homeless children are covered under the definition of charitable activities. The applicant has nowhere mentioned that their activity particularly pertains to advancement of educational programmes or skill development only to abandoned, orphaned or homeless children. They also perform other activities for the homeless children such as shelter, guidance, clothing, food and health. We are bound by the definition of the term 'charitable activities' as defined under the above said notification and are of the opinion that the applicant is not performing 'charitable activities', strictly according to the definition mentioned above.
- 5.11 Further the supply of services by the applicant to destitute women who are litigating divorce or are homeless or are victim of domestic violence also are not covered under the definition of "charitable activities" mentioned above.
- 5.12 In view of the above we find that, the applicant does not satisfy the conditions mentioned at Sr. No. 1 of Notification No. 12/2017 dated 28-06-2017 which provides exemption from tax to Services supplied by an entity registered under Section 12AA of the Income-Tax Act, 1961 (43 of 1961) by way of charitable activities and hence the supply undertaken by the applicant is not exempt on this count.
- 5.13 From a perusal of the submissions made by the applicant it is seen that the main thrust of its argument is that the activity of supply by the applicant trust are fully exempted from levy of tax under the provisions of Sr.No. 1 of Notification No. 12/2017 C.T. (R) dated 28.06.2017 i.e. Services supplied by an entity registered under Section 12AA of the Income-Tax Act, 1961 (43 of 1961) by way of charitable activities. Since we have found that the activities undertaken by the applicant do not conform strictly to the definition of a 'charitable activity, the applicant shall obtain registration under GST Act.
- 5.14 The second question raised by the applicant is, If their activity is held to be taxable then, whether the applicant is liable to pay GST on amounts received as Donation/Grants from various entities including Central Government and State Government. To answer this question we discuss the present issue as under:-
- 5.14.1 The scope of supply is as per section 7 of the GST Act and same is as below,-
7. Scope of supply. — (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;.....
- 5.14.2 Section 7(1) (a) refers to a supply 'made or agreed to be made for a consideration by a person in the course or furtherance of business'. Section 2(17) of the CGST Act defines 'business' and Section 2(31) of the CGST Act defines 'consideration' as follows,-
2. (17) "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;
- (h) services provided by a race club by way of totalisator or a licence to book maker in such club; and
- (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;



2(31) **consideration** in relation to the supply of goods or services or both includes—

- (a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;
- (b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

5.14.3 In order to arrive at a definitive conclusion on the taxability of service, the main ingredients which need to be necessarily present, as per GST statute, are the service (supply), the service provider (supplier), the service receiver (recipient) and the consideration for the service. In the instant case, if we refer to definition of "supply" (which is very much exhaustive), it covers almost all activities of the applicant. Moreover, definition of "consideration" includes grants and excludes only "subsidy". The profit motive is not important, if we make combined reading of all above definitions, including that of the "business".

5.14.4 The above provision provides that if there is supply of goods and services, made for a consideration in furtherance of business, then it is liable for GST. In present case all these

ingredients are met. The receipts are from Government in the form of grants and the activities for which the grants are received are not charitable activities as discussed above.

- 5.14.5 Regarding applicant's query with respect to donations received, we have not found any donation receipts or details as to what sort of donations are received (even after detailed perusal of the submissions made by the applicant). However, it is necessary to refer to Circular No 116/35/2019-GST dated 11.10.2019 issued vide F No 354/136/2019/TRU, by the Government of India, Ministry of Finance, Department of Revenue, (Tax Research unit in the matter which is self explanatory and reproduced as under:

Subject: Levy of GST on the service of display of name or placing of name plates of the donor in the premises of charitable organisations receiving donation or gifts from individual donors—Reg.

Representations have been received seeking clarification whether GST is applicable on donations or gifts received from individual donors by charitable organisations involved in advancement of religion, spirituality or yoga which is acknowledged by them by placing name plates in the name of the individual donor.

1. *The issue has been examined. Individual donors provide financial help or any other support in the form of donation or gift to institutions such as religious institutions, charitable organisations, schools, hospitals, orphanages, old age homes etc. The recipient institutions place a name plate or similar such acknowledgement in their premises to express the gratitude. When the name of the donor is displayed in recipient institution premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy and is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, then it can be said that there is no supply of service for a consideration (in the form of donation). There is no obligation (quid pro quo) on part of recipient of the donation or gift to do anything (supply a service). Therefore, there is no GST liability on such consideration.*

2.1 *Some examples of cases where there would be no taxable supply are as follows:-*

- (a) *"Good wishes from Mr. Rajesh" printed underneath a digital blackboard donated by Mr. Rajesh to a charitable Yoga institution.*
- (b) *"Donated by Smt. Malati Devi in the memory of her father" written on the door or floor of a room or any part of a temple complex which was constructed from such donation.*

2.2. *In each of these examples, it may be noticed that there is no reference or mention of any business activity of the donor which otherwise would have got advertised. Thus where all the three conditions are satisfied namely the gift or donation is made to a charitable organization, 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.*

- 5.15.1 The third question raised by the applicant is if the applicant is liable to pay GST on the amounts received in the form of Donation / Grants from various entities including Central Government and State Government, what will be the rate at which the GST would be charged.

- 5.15.2 To find the rate of tax we need to classify the services supplied by the applicant.

- 5.15.3 The services supplied by the applicant as per its submissions includes supply of services to 50 orphans and homeless children by way of shelter, education, guidance, clothing, food and health for the Women and Child welfare.
- 5.15.4 The Service Accounting Code (SAC) is a system of classification framed by the Central Board of Indirect Taxes and Customs (CBIC) and these codes are used to identify services and GST Rates to compute tax liabilities.
- 5.15.4 SAC 9993 covers Human Health and Social Care Services. From the submissions made by the applicant, in respect of orphans and children it provides social services along with provision of accommodation. These types of services provided by the applicant are covered under SAC 999332 and this SAC includes, residential social assistance services involving round-the-clock care services to children and youths, e.g., social services provided by orphanages, homes for children in need of protection, homes for children with emotional impairments, juvenile correction homes etc.
- 5.15.5 The applicant has submitted that it also render services to destitute women who are litigating divorce or are homeless or are victims of domestic violence. The applicant provides shelter, food, and medical facilities, clothing etc., to such destitute women mentioned above and also to rape victims. The applicant represents them before legal forums, including lodging FIR at police stations against the culprits and also arranges for counselling them through expert counsellors to bring them out of the trauma and help them to lead normal life.
- 5.15.6 SAC 9993 covers Human Health and Social Care Services. From the submissions made by the applicant, in respect of destitute women it is seen that the applicant provides social services along with provision of accommodation. These types of services provided by the applicant are covered under SAC 999334 and this SAC includes,
- i. residential social assistance services involving round-the-clock care services to adults, e.g., social services provided by homes for single mothers
 - ii. other social rehabilitation services.
- 5.15.7 In view of the above we hold that the subject services supplied by the applicant are covered under SAC 9993 and attract GST @18% (CGST 9% and SGST/UTGST 9%/IGST 18%) as per Notification No. 11/2017 – C.T. (R) dated 28.06.2017 as amended.
06. In view of the above discussions, we pass an order as under:

ORDER

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

Mumbai, dt.

For reasons as discussed in the body of the order, the questions are answered thus –

Question 1:- Whether applicant is required to obtain registration under the Maharashtra Goods and Service Tax Act, 2017?

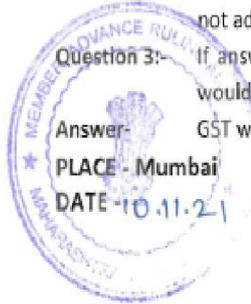
Answer:- Answered in the affirmative.

Question 2:- If answer to above question is affirmative, whether the applicant is liable to pay GST on the amounts received in the form of Donation / Grants from various entities including Central Government and State Government.

Answer:- Answered in the affirmative in cases of grants received. In case of donations, if the gift or donation is made to a charitable organization; 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, then GST is not leviable. In all other cases GST is leviable.

Question 3:- If answer to above question 2. is affirmative, what will be the rate at which the GST would be charged.

Answer:- GST would be charged @18% (CGST 9% and SGST/UTGST 9%/IGST 18%).




RAJIV MAGOO
 (MEMBER)


T.R. RAMNANI
 (MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Pr. Chief Commissioner of Central Tax, Churchgate, Mumbai
5. Joint Commissioner of State Tax, Mahavikas for Website.

Note:-An Appeal against this advance ruling order shall be made before, The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.

**Definition of “Charitable Activity” as per
Notification No. 12/2017, dated 26.06.2017**

(r) “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;

CIRCULAR REGARDING LEVY OF GST IF PUBLICITY IS GIVEN TO DONOR

Circular No. 116/35/2019-GST

F. No. 354/136/2019-TRU

Government of India

Ministry of Finance

Department of Revenue

(Tax research Unit)

Room No. 146, North Block,
New Delhi, the 11th October, 2019

To:

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/
Commissioner of Central Tax (All) /The Principal Director Generals/ Director Generals
(All)

Madam/Sir,

Subject: Levy of GST on the service of display of name or placing of name plates of the donor in the premises of charitable organisations receiving donation or gifts from individual donors– Reg.

Representations have been received seeking clarification whether GST is applicable on donations or gifts received from individual donors by charitable organisations involved in advancement of religion, spirituality or yoga which is acknowledged by them by placing name plates in the name of the individual donor.

2. The issue has been examined. Individual donors provide financial help or any other support in the form of donation or gift to institutions such as religious institutions, charitable organisations, schools, hospitals, orphanages, old age homes etc. The recipient institutions place a name plate or similar such acknowledgement in their premises to express the gratitude. When the name of the donor is displayed in recipient institution premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy and is not aimed at giving publicity to the donor in such manner

that it would be an advertising or promotion of his business, then it can be said that there is no supply of service for a consideration (in the form of donation). There is no obligation (quid pro quo) on part of recipient of the donation or gift to do anything (supply a service). Therefore, there is no GST liability on such consideration.

2.1 Some examples of cases where there would be no taxable supply are as follows:-

- (a) “Good wishes from Mr. Rajesh” printed underneath a digital blackboard donated by Mr. Rajesh to a charitable Yoga institution.
- (b) “Donated by Smt. Malati Devi in the memory of her father” written on the door or floor of a room or any part of a temple complex which was constructed from such donation.

2.2. In each of these examples, it may be noticed that there is no reference or mention of any business activity of the donor which otherwise would have got advertised. Thus where all the three conditions are satisfied namely the gift or donation is made to a charitable organization, 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.

3. Difficulty if any, in the implementation of this circular may be brought to the notice of the Board.

Yours Faithfully,

Susanta Mishra
Technical Officer (TRU)
Email: susanta.mishra87@gov.in
Tel: 011-23095558

**CIRCULAR REGARDING THE NEED OF A DIRECT NEXUS BETWEEN
THE BENEFICIARY AND DONOR****SERVICE TAX CIRCULAR****NO.127/9/2010 – ST****Dated: August 16, 2010****Subject: Service tax on commercial training and coaching – clarification whether
'donation' is 'consideration' – regarding.**

A representation has been received seeking clarification whether donations and grants-in-aid received from different sources by a charitable Foundation imparting free livelihood training to the poor and marginalized youth, will be treated as 'consideration' received for such training and subjected to service tax under 'commercial training or coaching service'.

2. The matter has been examined. 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. In such a situation, service tax is not leviable, since the donation or grant-in-aid is not linked to specific trainee or training.

4. Trade Notice/Public Notice may be issued to the field formations accordingly

5. Please acknowledge the receipt of this circular. Hindi version follows.

F.No.354/119/2010-TRU**(J. M. Kennedy)**
Director, TRU