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CHARTERED ACCOUNTANTS

Issues for NGO's

Path to tread today

- Applicability of GST on receipts by charitable trusts
 - Whether there is a supply?
 - Whether the supply is in the course or furtherance of business?
 - Is there any specific exemption?
- Applicability of GST on payments made by charitable trusts
- Tax Implications to donors/sponsors

Supply : Scope : Section 7(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**

Supply : Essential Ingredients

- All forms of Supply
 - Supply vs. Activity vs. Benefit
- Made or Agreed to be made
- For a Consideration
 - Can be monetary or non monetary
 - Extent of Nexus
 - Cause & Effect Relationship & Enforceability to be examined
- By a person
- In the course or furtherance of business
 - In the course of business
 - In furtherance of business

Supply business

- Tata Motors is in the business of automobile manufacture
 - Supply of motor cars is in the furtherance of its' automobile business
 - Sale of scrap generated is in the course of its' automobile business
- XYZ charitable trust is engaged in social cause of rehabilitation of distressed elderly persons in old age homes
 - Supply of accommodation is in the furtherance of its' _____ business?
- How to interpret the term 'business' ?

Business: Pre GST Background

Citation	Decision in brief
State Of Andhra Pradesh vs Abdul Bakhi And Bros [1964] 15 STC 644 (SC)	Profit Motive is a must to treat some activity as business
Raipur Manufacturing Co. Ltd. [1967] 19 STC 1 (SC)	Sale of Scrap by a textile dealer – not part of business though there is intention to make profits
State of Tamil Nadu and Another Versus Board of Trustees of the Port of Madras 1999 4 SCC 630 (SC)	If the main activity does not constitute business, an incidental activity will not constitute business
Commissioner of Sales Tax vs. Sai Publication Fund AIR 2002 SC 1582 (SC)	Sale of publications and prasadam by a temple does not constitute business even if there is a profit motive

Business

“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) activities of a race club including by way of totalisator or a license to book maker or activities of a licensed 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

Specific Exemption Entries

Notification 12/2017-CT(Rate)

- 1. Services by an entity registered under Section 12AA of Income-tax Act, 1961 by way of charitable activities
- 13. Renting of precincts of a religious place by a charitable or religious trust
- 80. Training or Coaching in sports by charitable entities
- Charitable Activities defined in Clause 2(r)

CBIC Flyer

- Highlights specific exemption entries and definition of charitable activities
- Exemption is specific
- Does not consider the impact of 'business'
- Considers various scenarios in the light of several exemption entries

CBIC Flyer : Scenarios

Scenario	CBIC Clarification	Remarks
Renting of Immoveable Property	Exempt if in the precincts of religious place if charges are less than Rs. 1000 per day	Supply of renting is in the furtherance of ___ business
Advertisement Hoarding received by a Ganesh Mandal	Taxable	Supply of advertisement is in the furtherance of ___ business
Educational Institutions	Entry 66 exempts recognised education	What happens to other than recognised courses?
Running Public Libraries	Entry 50 exempts such services	
Running Hospitals	Entry 74 exempts healthcare services	

RCM – Whether trusts liable?

- GTA Services (other than 12% forward charge cases) – if already registered
- Legal Services / Services by Arbitral Tribunal – if received by business entity
- Services rendered by Government (including Renting*) – if received by business entity
- Import of Services (Entry 10 provides limited exemption for charitable activities)

Tax Implications on donors/sponsors

- Sponsorship liable for RCM
- For donations in kind, whether ITC is available?

End Note

- GST is an indirect tax
 - Does not impact Supplier if able to collect
 - Breaks credit chain if intermediary entity steps out (exempted / not covered)
- Trustee-ship position is an onerous one
- Once registered, multiple compliance requirements kick in

