

## Is GST Applicable to Charitable Trusts?

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The Maharashtra Authority for Advance Ruling (MH AAR) recently held that Charitable Trusts are liable to pay GST on the services rendered on grants and non-philanthropic donations received by them unless covered under Charitable Activity. So, let's decode whether GST is applicable on donations received.

### **AAR's findings in the case of Jayshankar Gramin Va Adivasi Vikas Sanstha Sangamner ('JGVAVS' or 'the Trust') [TS-604-AAR(MAH)-2021-GST],**

The JGVAVS trust approached to MH AAR to determine the applicability of GST on grants or donations received by the trust for services to orphans and homeless children (like shelter, education, guidance, clothing, food, health etc.) or Services to destitute women (like shelter, food, medical facilities, clothing etc.).

According to MH AAR, if consideration is received for those activities listed under Sr No. 2(r) of Not. 12/2017 – CT (R) as charitable activities, then only exempt from GST. Thus, donations received for all other activities that are not specifically Charitable Activities are taxable. (Para 5.8)

Additionally, AAR observed that the term “consideration” as defined under Sec 2(31) of the CGST Act **includes ‘grants’** and excludes **only “subsidy”**. Thus, grant received will form part of the consideration for the purpose of the levy of GST (Para 5.14.3).

According to MH AAR combined reading of all relevant definitions of GST Law including that of the "business" profit motive is not important (Para 5.14.3). Thus, activities under consideration carried out by the trust are for furtherance of business.

Thus, the receipts from the Government in the form of grants or the donations received for non-charitable activities are liable to GST.

The reference to the para given below of [Circular No. 116/35/2019-GST](#) is also relevant

before decoding further,

*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.*

Thus, as per the aforesaid circular, it can be said that reference or mention of any business activity of a donor or advertisement thereof can be liable to GST else donations are not liable to GST.

### **What Does the GST Law Say?**

**A**mount received by the charitable trust for social activities can be of below nature.

- Donation received without any direction
- Donation received for specific activity
- Donation received for specific activity with specific direction to share the details of outlay for specific activity.

Now, the activity performed must fall within the scope of supply as prescribed under Section 7 of the CGST Act in order to levy GST.

*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**;***

As a result, the following three ingredients are required to cover activity within the scope of supply.

1. Supply includes all forms of supply of **goods or services or both**
2. It should be **made or agreed to be made for a consideration**
3. It should be **in the course or furtherance of business**;

Thus, to levy GST on donations, all of these aspects must be present in the transaction.

The first aspect is that supply should include all forms of supply of goods or services or both; thus, a monetary transaction or a donation **without any obligation to supply goods or services or both does not constitute supply**.

As previously stated, “Consideration” is one of the legal ingredients of the scope of

supply. The term “Consideration” has been defined under Section 2 (31) of the CGST Act read 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.*

As per this definition, consideration may be paid by the recipient or any other person. Thus, it is irrelevant who is paying consideration. However, the definition uses the phrase **‘in respect of, in response to, or for the inducement of, the supply of goods or services or both’**. As a result, consideration should be in respect of supply or directly related to supply. A critical aspect is that consideration should be paid for goods or services provided, and the two should be linked. Furthermore, the term “Payment” even not defined under GST law, as per the dictionary meaning:

*‘Payment’ is the discharge of an obligation by the delivery of money or it’s equivalent, and generally made with the assent of both parties to the contract. [Refer ‘The Law Lexicon’]*

Donations are always made without any obligation or in the form of voluntary contributions, even if they have a specific purpose. If there is no obligation (quid pro quo) on part of recipient of the donation or gift to do anything against amount received then amount received will not qualify as consideration.

Further, MH AAR observes that activities undertaken by charitable trust can be treated as an **activity in relation to business unless** mentioned under exemption entry.

However, before concluding the levy of GST in the case of trust, it most important to construe whether the trust is carrying out activity in relation to business or whether the trust can be treated as an ‘Business Entity’. As per Section 2(17) of the CGST Act 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;*

Thus, it is true that profit is not the key aspect for qualifying entity as business. However, the activity carried out by the entity should be of the nature of trade, commerce, manufacture, profession, vocation, adventure, wager or **any similar activity**. The activity of the trust does not fit in to any of such similar activity.

Erstwhile, in the case of Sai Publication Fund [2002 4 SCC 7 (SC)] it was held that where the main activity is not business, then any incidental or ancillary transaction, unless established by the Revenue Department to be an independent business transaction, will also be considered as charitable only and not business. Additionally, the Hon'ble Supreme Court observed that if the main and dominant activity of the assessee trust in that case was to spread message of Sai Baba, then bringing out publications and sale thereof by the assessee trust to its devotee at cost price did not amount to business.

Similarly, the observation of courts in various cases like Gujarat Maritime Board [2007 14 SCC 704 (SC)], Cutchi Dasha Oswal Mahajan Udyog Committee [36 STC 1 (BOM-HC)] etc. would also be required to be taken into consideration before concluding that the certain transaction of trust is in the course of business.

As a result, some of these factors are relevant and should be considered before imposing GST liability on donations received.

### **Way Forward**

This ruling will undoubtedly add to the litigation for all Charitable Trust from the start, by requiring them to get registered under GST and discharge GST liability with interest. Thus, the Charitable Trust should reconsider its various activities in the light of possibility if GST levy. In addition, the Trust should prepare and implement the step plan as per the risk parameters determined in order to mitigate the risk based on the nature of activities.

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