

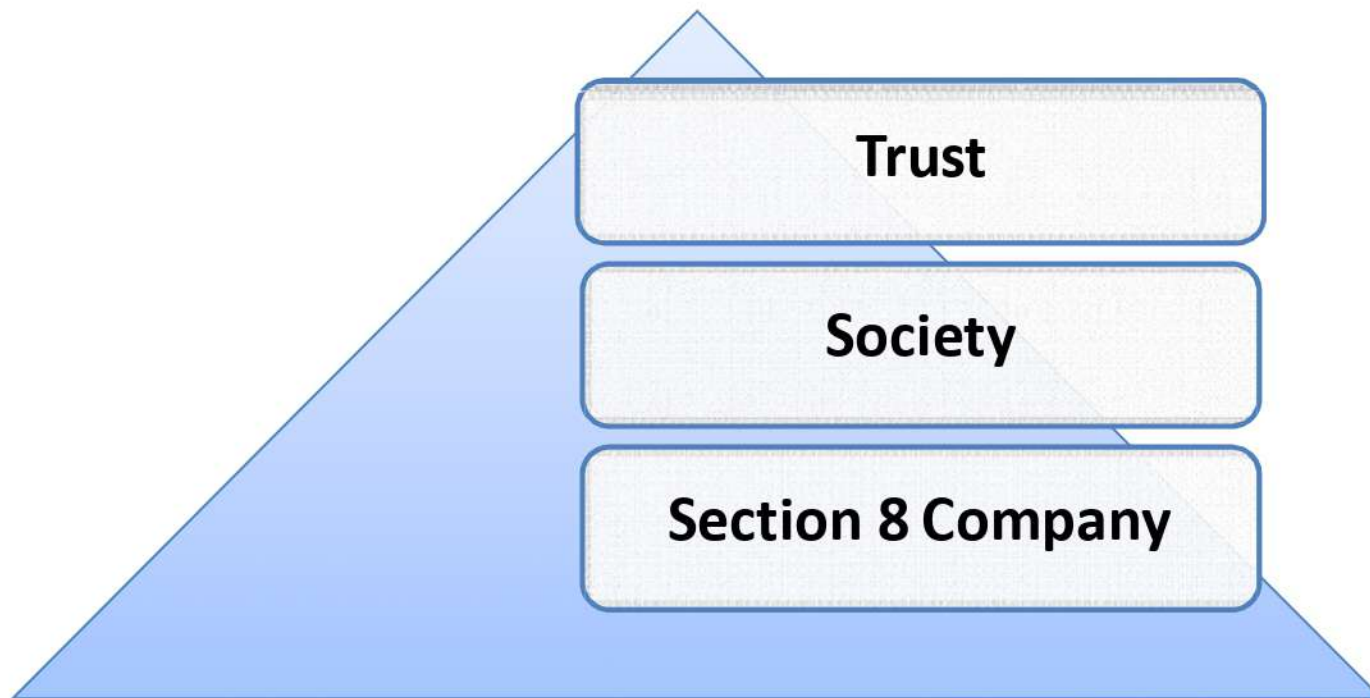
GST FOR NOT-FOR-PROFIT SECTOR

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- Rajput Jain & Associates is a Chartered Accountants firm, with its headquarter situated at New Delhi (the capital of India). The firm has been set up by a group of young, enthusiastic, highly skilled and motivated professionals who have taken experience from top consulting firms and are extensively experienced in their chosen fields has providing a wide array of Accounting, Auditing, Taxation, Assurance and Business advisory services to various clients and their stakeholders. focus at providing tailor made solutions to challenging problems of our clients, and perform with high quality and timely service.
- Rajput Jain & Associates, a professional firm, offers its clients a full range of services, To serve better and to bring bucket of services under one roof, the firm has merged with its various Chartered Accountancy firms pioneer in diversified fields
- Our main office is located at Delhi. Incidentally, Delhi is the Capital of India. Our other offices are in Mankapur & Moradabad (U.P.). We have associates all over India in big cities. All our offices are well equipped with latest technological support with updated reference materials. We have a large team of professionals other than our Core Team members to meet the requirements of our prospective clients including the existing ones. However, considering our commitment towards high quality services to our clients, our team keeps on growing with more and more associates having strong professional background with good exposure in the related areas of responsibility. Further to meet the growing demands of the fiercely competitive market we are constantly looking forward for team of associates comprising of highly skilled professionals to cater the needs ever increasing clientele.

What is NGO or Not-For-Profit Sectors?

- NGO/NPOs are basically entities which are formed with some social welfare purpose. These entities don't operate to generate profits.
- In India, NGO may be seen in three forms:



Wrong assumptions related to applicability of GST on NPOs

**ALL CHARITABLE
ACTIVITIES CARRIED OUT
BY NGO ARE EXEMPT
FROM GST**

**NGOs ARE NOT REQUIRED
TO REGISTER UNDER GST**

**ALL NGOs REGISTER UNDER
SECTION 12AA OF INCOME TAX
ACT ARE CHARITABLE ENTITIES**

How taxation works in GST

- Coverage under definition of '**Person**';
- Is activity can be construed as '**Supply**';
- Coverage under definition of '**Business**';
- Is '**Consideration**' involved?

Person as defined in GST

Section 2(84) "**Person**" includes-

- (a) an individual;*
- (b) a Hindu Undivided Family;*
- (c) a company;*
- (d) a firm;*
- (e) a Limited Liability Partnership;*
- (f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;*
- (g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013;*
- (h) any body corporate incorporated by or under the laws of a country outside India;*
- (i) a co-operative society registered under any law relating to co-operative societies;*
- (j) a local authority;*
- (k) Central Government or a State Government;*
- (l) society as defined under the Societies Registration Act, 1860;***
- (m) trust;*** and
- (n) every artificial juridical person, not falling within any of the above;*

Supply as defined in GST

‘Supply’ is defined under section 7 of CGST and it states as under:

Section 7. (1) For the purposes of this Act, the expression “supply” includes-

- *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**;*
- *import of services **for a consideration** whether or not in the course or furtherance of business; and*
- *the activities specified in Schedule I, **made or agreed to be made without a consideration**; and*

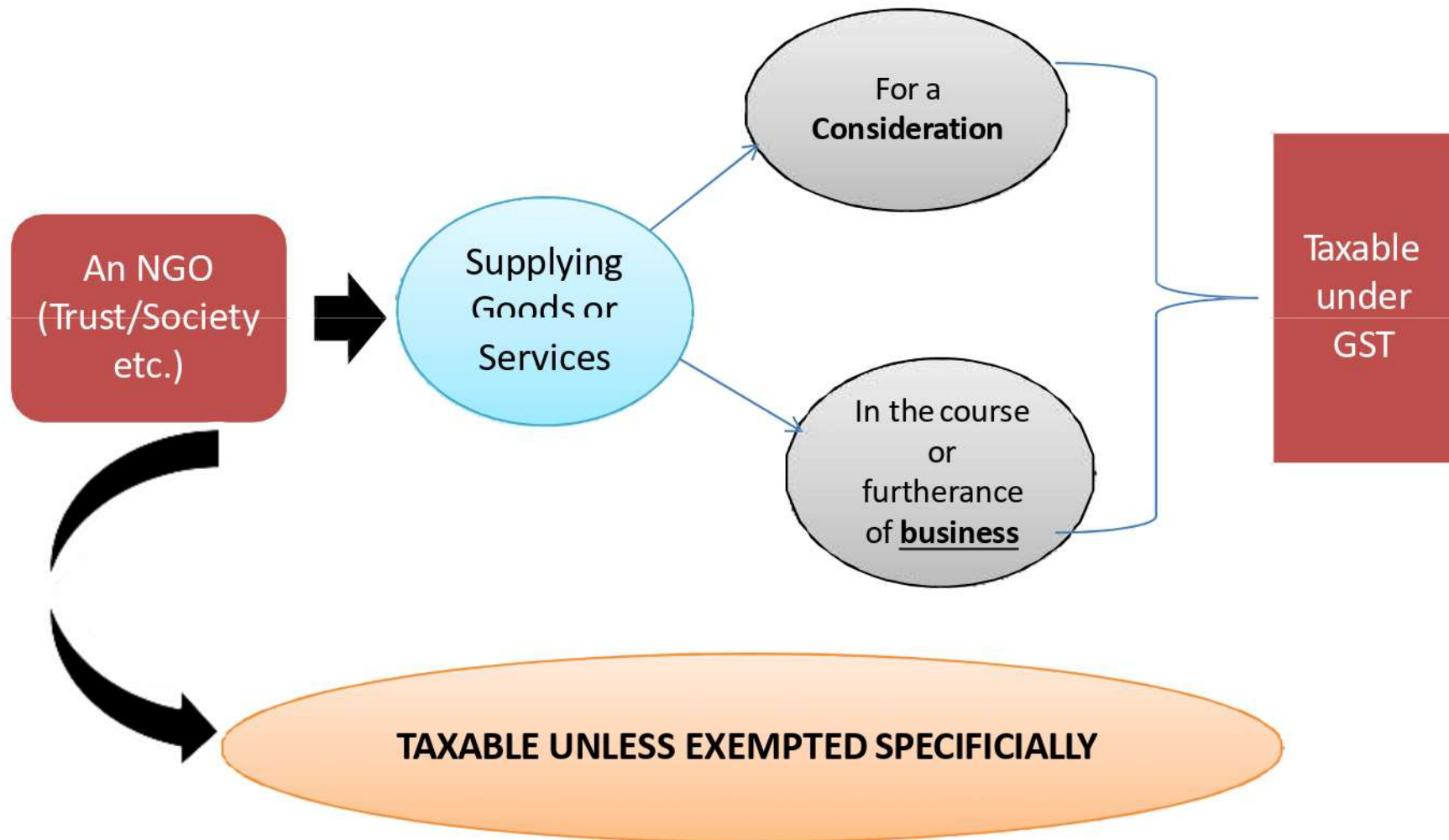
Business as defined in GST?

- **'Business'** is defined under section 2(17) of CGST which states:

2(17) "business" includes-

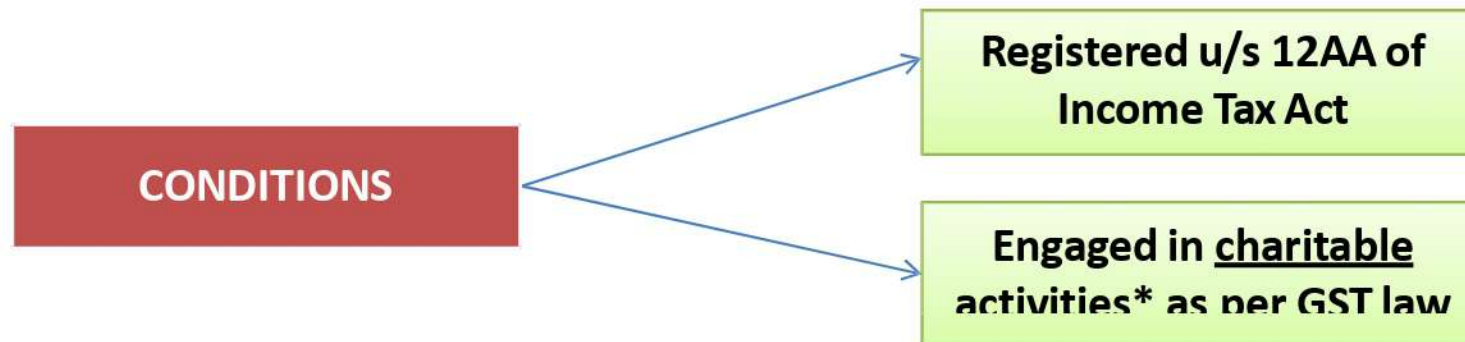
- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, **whether or not it is for a pecuniary benefit;**
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
- (c) any activity or transaction in the nature 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;

Relevance of definitions for an NGO



Exemption on Services Provided by Charitable Entities

Serial No. 1 of Notification No. 12/2017-Central Tax (Rate) dated June 28, 2017



***Charitable Activities** means activities relating to-

- (i) public health by way of-
 - (A) care or counselling 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;

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EXCLUSIVE
DEFINITION – NOT
A BROAD
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INCOME TAX ACT

Exemption on Services Provided by Charitable Entities

Serial No. 13 of Notification No. 12/2017-Central Tax (Rate) dated June 28, 2017

LIMB 1

Conduct of any religious ceremony
(for all religions)

LIMB 2

Renting of precincts of a religious place* meant for general public – owned or managed by a 12AA/10(23C) registered entity

**NO
EXEMPTION, IF**

Renting of rooms for charges of 1000 or more

Renting of premises, open area, kalyanmandapam, community halls for 10,000 or more

Renting of shops or other space for business or commerce for 10,000 or more

*Religious Place – A place primarily meant conduct of prayers or worship pertaining to a religion, meditation or spirituality.

Exemption on Services Provided by Charitable Entities

Serial No. 80 of Notification No. 12/2017-Central Tax (Rate) dated June 28, 2017



Training or coaching in recreational activities relating to sports by an entity registered under section 12AA of the Income Tax Act

Entry No. 10 of Notification No. 9/2017-IGST (Rate) dated June 28, 2017



Import of services by a charitable entity for the purposes of charitable activities (except OIDAR services).

Examples

- Religious Yatra to pilgrimage

No exemption if being organized by a charitable entity. However exempt if covered by *Entry no. 60 of Notification No. 12/2017 – Central Tax (Rate) dated 28th June 2017*.*.



*Entry no. 60 of notification no. 12/2017 - Services by a specified organisation in respect of a religious pilgrimage facilitated by the Ministry of External Affairs, the Government of India, under bilateral arrangement

Examples

- Educational trust registered under section 12AA of the Income Tax Act imparting education to abandoned, orphans & homeless children – **Exempt as charitable activity.**
- Residential programme organized with primary objective of advancement of religion, spirituality or yoga, if fee charged includes cost of lodging & boarding – **Exempt as charitable activity.** *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 - CBI&C Circular No. 66/40/2018-GST [F.NO.354/314/2017-TRU] dated 26-9-2018*
- Navratri functions, other religious functions, and religious poojas conducted on special occasions like religious festivals by persons so authorised for this purpose by the charitable or religious trust. – **Exempt as this is a charitable activity.**
- During a religious function, trust rented out space to agencies for advertisement hoardings, does income from such activity will be exempt? – **No, as this loses the essence of religious ceremony thus, not a charitable activity.**

Registration of NGOs under GST

- **Interest on donations received** – NGOs generally keep the donations received from donors as fixed deposits unless it is utilized for specified charitable purpose. NGO earns interest on such fixed deposits. Reference should be made to the Entry No. 27 of Notification No. 12/2017 which exempts interest income from extending deposits.

Definition of 'Aggregate Turnover' requires to consider value of exempt supplies too. In the instant case, NGOs might be treated as supplying services in the form of extending deposits in consideration of interest. Thus, the situation may ask for GST registration if it exceeds threshold limit. However, the fact that **NGOs engaged exclusively in exempt supplies shall not need registration under GST** can also not be ignored.

- **Reverse Charge Mechanism** - Registration where NGOs are liable to pay GST under Reverse Charge Mechanism (RCM).

Supreme Court's Decision – Sai Publication Fund

CST Vs Sai Publication Fund (2002) 258 ITR 70 / 122 Taxman 437

- Trust publishes Books, Pamphlets and other Literature containing message of Saibaba which are made available to devotees on nominal charge to meet cost.
- Section 2(5A)- "Business" includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture **whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit** and whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure or concern and any transaction in connection with, or incidental or ancillary to, the commencement or closure of such trade, commerce, manufacture, adventure or concern;...
- There is no dispute that the primary and dominant activity of the Trust is to spread the message of Saibaba. **This main activity does not amount to "business"**. The activity of publishing and selling literature, books and other literature is obviously incidental or ancillary to the main activity of spreading message of Saibaba and not to any business as such even without profit-motive and it is in a way a means to achieve the object of the Trust through which message of Saibaba is spread. This being the position, it cannot be said that the Trust carries on the business of selling and supplying goods so as to fall within the meaning of "dealer" under section 2(11) of the Act. If the main activity is not business, then any transaction incidental or ancillary would not normally amount to "business" unless an independent intention to carry on "business" in the incidental or ancillary activity is established.
- **We have stated above that the main and dominant activity of the Trust in furtherance of its object is to spread message. Hence, such activity does not amount of "business". Publication for the purpose of spreading message is incidental to the main activity which the Trust does not carry as business. In this view, the activity of the Trust in bringing out publications and selling them at cost price to spread message of Saibaba does not make it a dealer under section 2(11) of the Act.**

AAR – Akshay Patra Foundation

[2019] 102 taxmann.com 213 (AAR- RAJASTHAN)

**Serving of food & Mid-Day
Meal Programs & Anganwadi
Meals**



Taxable under GST – Supply of goods
against consideration received from
Government

**Transfer of goods between
one kitchen to another
kitchen situated in different
states**



Taxable under GST – Supply between
distinct person

Sale of scraps



Taxable under GST – Supply of goods

This Ruling settles all the confusions due to general notions and cleared that nature of activities should be examined well to determine taxability of a charitable entity under GST.

AAR – Dream Runners Foundation Ltd.

[2019] 103 taxmann.com 253 (AAR - TAMILNADU)

- Applicant is a Trust with the object to organize events for charitable Cause like Marathon, Blood Donation Camp, Organ Donation Camp, Eye Donation Camp, Health Awareness Camp, Etc., and utilize the fund raised for the charitable cause like funding to Non-Governmental Organizations (NGOs), Hospitals, Trust and other Charitable Organizations. They are registered under Section 12AA of the Income Tax Act, 1961 and the receipts are exempted under Section 80G of the Income Tax Act. The receipts of the event are utilized for the event and the balance left is donated to the cause for the support of providing prosthetic legs.

Decision:

- Activity of conducting Marathon event by the Applicant **does not fall under the definition for Charitable activities mentioned under clause 2(r) of Notification 12/2017** Central Tax (Rate), dated 28th June, 2017 and Notification No.II(2)/CTR/532(d-15)/2017 vide G.O. (Ms) No. 73, dated 29.06.2017.
- Therefore, though the Applicant is an entity registered under Section 12AA of the Income Tax Act and conducts the Marathon events for raising funds for charitable activities, the exemption under Sl. No. 1 of these notification does not apply to the activity of organizing the marathon by the Applicant.

RCM for charitable entities

- Most of the services specified under Notification No. 13/2017 requires that service recipient should be a business entity or body corporate.
- Security Services – Charitable entity if registered under GST

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