Frequently Asked Questions for NPOs on GST

Committee for Co-operatives and NPO Sectors
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

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Foreword

The Not- for- Profit Sector has been playing a significant and distinctive role towards social development in the country. The sector serves as catalyst for inclusiveness and growth through its contribution in various areas like education, health, environment, arts and culture etc. Also the NPOs are acting as a means to entities in helping them to meet their Corporate Social Responsibility objectives.

So, the procedures, control system, financial disclosures and other governance principles and practices become important to be adopted by NPOs.

I congratulate the Committee for Co-operatives and NPO Sectors of ICAI in taking the initiative of bringing out FAQs for NPOs in series to bring conceptual clarity on various issues relating to NPOs. The first in that series being this publication brought out by the Committee is "Frequently Asked Questions for NPOs on GST" to help in clear understanding of the provisions related to GST applicable on NPOs.

I extend my sincere appreciation to the entire Committee and specially the efforts put in by CA. Sushil Kumar Goyal, Chairman, Committee for Co-operatives and NPO Sectors and CA. Jay Chhaira, Vice- Chairman, Committee for Co-operatives and NPO Sectors for initiating this publication.

I am sure that this publication would be of great help to the members and other stakeholders.

CA. Naveen N.D. Gupta
President ICAI

Date: 4th February, 2019

Place: New Delhi

Preface

The Non- Profit Organizations (NPOs) could be in the form of Societies, Trust or Companies registered under Section 8 of Companies Act, 2013 and it could be large international charities or community-based self-help groups. Thus NPOs comprises of varied types of organizations.

The NPO Sector is one of the fastest growing sectors not only in Indian economy but also at a global level.

Given the magnitude and purpose, various compliances by NPOs have become very important to professionals and stakeholders at large for achieving social causes. In this regard, it becomes vital to understand the provisions clearly with regard to taxation, accounting, auditing and regulation of foreign contribution.

At this backdrop, the Committee for Co-operatives and NPO Sectors of ICAI which has been constituted by ICAI to encourage good governance and best practices in the two sectors has decided to bring out a publication in series covering FAQs on different topics relating to NPOs to facilitate in bringing in conceptual clarity on the issues specific to the sector. The first publication in that series, which is being brought out by the Committee is- Frequently Asked Questions for NPOs on GST.

The publication covers issues related to GST for NPOs in terms of Applicability of GST to different types of organizations and also covers some fundamental issues. Further, the queries received from members were also considered while preparing the FAQs.

We take this opportunity to thank the President of ICAI, CA. Naveen N. D. Gupta and Vice President of ICAI, CA. Prafulla Premsukh Chhajed for their encouragement and moral support in bringing out the publication.

We would like to thank all the Committee Members for their support and would also like to thank Indirect Taxes Committee, ICAI for its valuable inputs.

We would like to sincerely thank and put on record our appreciation for the contribution and efforts put in by CA. (Dr.) Manoj Fogla, CA. Tarun Kumar Agarwalla and CA. Suresh Kumar Kejriwal in preparing the Draft of this publication.

We appreciate the efforts put in by Ms. S. Rita, Secretary, Committee for Co-operatives and NPO Sectors in bringing out this publication.

We sincerely believe that the members of the profession and other stakeholders will find the publication immensely helpful.

CA. Sushil Kumar Goyal
Chairman
Committee for Co-operatives
and NPO Sectors, ICAI

CA. Jay Chhaira
Vice-Chairman
Committee for Co-operatives
and NPO Sectors, ICAI

Date: 4th February, 2019

Place: New Delhi

Contents

Chapter 1

Applicability of GST to NPOs, Levy and Fundamental Issues

Q.1.1 Is the GST law applicable to charitable organisations?

It may be noted that Section 2(84) of CGST Act defines the term "person". This definition is much broader than the definition of "person" under the Income Tax Act,1961. It includes Trusts, Societies and all types of artificial juridical persons. Therefore, charitable organisations irrespective of their mode of registration are included in the definition of "person. It may be noted that during pre-GST era also, similar definitions were present in the erstwhile Service tax and VAT laws.

Q.1.2 Will all activities of a charitable institution be covered under GST?

Whether an activity is charitable or not is a secondary issue; the primary issue is whether such activity has a component of supply and consideration and whether it can be considered as *"in the course or furtherance of business".*

The activities of NPOs can be divided into three categories from GST perspective:

(i) Activities pertaining to grants and donations which are completely without consideration and not in the course or furtherance of business are outside the scope of GST provided no benefit is given to the donor in return.

(ii) Activities having a component of supply which could be considered as *"in the course or furtherance of business"* are taxable under GST. However, some of such activity may be specifically exempt under GST.

(iii) Activities having a component of supply but are not *"in the course or furtherance of business"* are not taxable under GST. In such cases the onus will be on the NPO to establish that the activity was not *"in the course or furtherance of business".*

In this context it should also be noted that the definition of business under GST is relevant.

Q.1.3 What is "charitable purpose" under GST?

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 following activities under GST are to be considered as "Charitable activities" –

(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;

  (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;

Further, under GST "Charitable Organisation" has not been defined; however, to claim an exemption as 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.

Q.1.4 In the light of the restricted definition of 'charitable activity' under Notification no 12/2017, does it imply that all other charitable organisations shall be treated as commercial entities?

No; it may be noted that GST is a 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 being an Indirect Tax, it applies to specific economic activities which could be treated as in furtherance of business under GST. Therefore, 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.

Q.1.5 In the light of the restricted definition of 'charitable activity' under Notification no 12/2017, does it imply that charitable organisations exempt under this notification shall not be subjected to GST for any activity?

In such cases, the exemption is not to the organization but to the services in relation to charitable activity as defined in the notification and therefore, if such organization, apart from services in relation to specified charitable activities, are engaged in providing other taxable supply then the organization shall be subjected to GST in respect of such taxable supplies.

Q.1.6 Whether GST is applicable to CSR Projects undertaken by charitable entity for any corporate.

It depends upon the nature of the contract. The various aspects to be looked into in respect of the transactions of CSR projects 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 types of

transactions which may be specifically exempt. For example, construction of toilets for sanitation and public convenience.

— 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 of *Apitco Ltd. v. 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 the donor. In other words, whenever a corporate gives grant to a charitable organisation there is no service provider-client relationship, it is trusteeship contract and the grant has to be utilised as per a pre-approved budget. Such budget should confine only to the proposed activities. In this case the value of CSR project would not be forming part of the turnover in the hands of the charitable entity and hence beyond the scope of supply and consequently GST.

Q.1.7 A Charitable trust is acting as an implementing agency for CSR activities. Bills for various expenses are raised in the name of the Charitable trust. Whether such expenses are to be included in the value of supply? Whether ITC would be available to the Trust ?

The Terms of reference are very important in these cases. Where the trust is acting as an implementing agency on principal to principal basis, bearing the risk and reward of the project, the Charitable trust would raise invoice on the CSR Funding agency. Further, the Charitable trust can pay taxes and will also be eligible to take credit of the ITC related to the project. However, when the trust is only acting as a mere implementing agency and generates fund utilization certificate during the implementation of the project, it is acting merely as a trustee and hence the amounts so received and the expenses can neither be turnover nor expenses for the trust . Thus the question of availing of ITC does not arise.

Q.1.8 Whether Grants/Donations received by NPO would be Non-GST Supply or No Supply under GST Act?

Grants/donations received by NPO shall not be covered as supply as these are without consideration and also not in the course or

furtherance of business and therefore grant/donations received are no supply under GST. However, if through the grant agreement, any benefit, directly or indirectly, goes to the donor then such grant may be subjected to GST.

Q.1.9 A trust receives grant and the grant agreement has a condition for display of the name of donor on the program materials and sites. Whether it is taxable?

A grant contract with a stipulation to display the name in the program shall come under the purview of the GST as the donor is getting advertisement or publicity out of it. However, it does not imply that a charitable organisation cannot acknowledge the donor by putting its name in the project site. The donor if stipulates a condition of publicity against a grant transaction, it will tantamount to consideration against supply on which GST will apply.

Q.1.10 Is GST applicable in case publicity is given to donors on websites?

Here publicity is given to the donors on the website of the donee. In this case if the publicity is gratuitous and not arising out of any precondition or stipulation of contract of donation, the said publicity would not be regarded as barter and hence the grant shall not be subject to GST. However, if the publicity is out of a condition arising out of the contract of the grant, then the donation amount shall be regarded as consideration. In such case the publicity activity may be regarded as a kind of business activity by the donee to generate revenue. There would be no difference in application of GST whether or not such revenue is utilised for charitable purpose.

Q.1.11 Whether GST on sale of food stuff in canteen at subsidised rate for the company by co-operative society is to be charged? Will it be considered as exempt if the factory canteen is statutorily required to be run by the company?

Here the cooperative society is selling food stuff to a company at its factory. As per the available facts the activity seems to be a business activity and hence there is supply which is taxable under GST. Even if the canteen is required to be statutorily run, the nature of activity remains the same and will attract GST.

Q.1.12 An NGO provides consultancy services and receives an income of say 5 lakh rupees, but receives the amounts as donations. Discuss its taxability.

Consultancy income shall be subject to GST. Any change in the nomenclature or disclosing it as donation will not change its taxable character. A camouflaged consultancy agreement cannot go out of the GST net only by using the terminology of grant or donation. However, business activity up to a turnover of Rs. 20 lakh shall be exempt from GST as per Section 22.

Q.1.13 A municipality provides capital grant for construction of solid waste management plant to a Section 8 company. After completion of plant, the plant is to be managed and operated by the company itself. Whether the capital grant is taxable in the hands of the company under GST?

A grant, whether revenue or capital, to a charitable organization shall be exempt from GST. It may be noted that there is a fundamental difference between a grant received by a charitable organization and a grant or subsidy received by a commercial organization. A charitable organisation receives the grant as a trustee of public at large whereas a commercial organization itself is the beneficiary of such grant.

Further, a capital grant or subsidy received from Government, either Central or State has been exempted specifically. However, there is no such exemption for local authority. Hence a grant from a Municipal Corporation shall be liable to tax under GST if the recipient is an organization other than a charitable organization.

Q.1.14 A non-profit organisation is engaged in technology policy research, related to internet governance, etc and the receipts are in the form of research grants from organisations/universities, and donations from individuals. Will GST be levied on the receipts?

A grant received purely for charitable purposes and applied accordingly as a legal obligation shall not be covered under GST. However, if research services are being provided as consultants or against specific deliverables which go back to the donor or any other party at the directions of the donor, then GST will apply. In such cases even sharing of Intellectual Property Rights by the donor will attract GST provisions.

Q.1.15 A service club receives grant from Head Office out of India and has to utilize the same towards the objects decided by the HO. Whether it is taxable ?

Grants/donations received by NGO shall not be covered as supply as these are without consideration and also not in the course or furtherance of business. However, if through the grant agreement, any benefit, directly or indirectly, goes to the donor then such grant may be subject to GST.

Q.1.16 A trust not charitable within the meaning of GST but registered under 12AA of the Income-tax Act is receiving foreign / local grants from non govt institutions exceeding Rs.20 lakhs. Whether it is liable to pay GST on its receipts or liable to pay IGST on the foreign grants?

As discussed above GST law will not apply to genuine grants or donations received by charitable organisations.

Q.1.17 How to ascertain the taxable value for levy of CGST & SGST/UTGST?

Section 15 of the CGST Act, 2017 specifies that the value of supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related, and the price is the sole consideration for the supply. Further, the section provides for certain inclusions which will form part of the value viz., incidental expenses, commission, interest, penalty etc. In cases where the supplier and recipient are related persons or where the price is not the sole consideration, the provisions and method for ascertaining the value of taxable supply as prescribed in the Central Goods and Services Tax Rules ("the CGST Rules" or "the CGST Rules, 2017") (Rules 27 – 35) shall apply.

Q.1.18 An NPO has minor income from sale of scrap or training fees etc. If this income is small or if the aggregate turnover (exempted and non exempted) is over Rs.20 lakhs per annum, will such cases attract GST?

Yes. GST is payable by all the registered persons irrespective of the value of taxable supply. Aggregate turnover includes exempted

turnover and it is to be considered for the calculation of liability to register, which is Rs 20 lakh in a financial year.

Q.1.19 Is GST applicable to training programs, camps, and events conducted by a charitable trust. If the services provided by way of training in recreational activities relating to arts and culture, or sports by the charitable entity, will it be exempt from GST.

NPOs providing any services against fee shall be subject to GST as discussed above.

Q.1.20 What do you mean by 'Governmental Authority' ?

'Governmental Authority' means an authority or a board or any other body, -

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government, with 90 per cent. or more participation by way of equity or control, to carry out any function entrusted to a Municipality under Article 243 W of the Constitution or to a Panchayat under Article 243 G of the Constitution.

Q1.21 What do you mean by 'Governmental Entity'?

'Governmental Entity' means an authority or a board or any other body including a society, trust, corporation,

(i) set up by an Act of Parliament or State Legislature; or

(ii) established by any Government, with 90% or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.

Q.1.22 What is the Meaning of 'General Public'?

'General public' means the body of people at large sufficiently defined by some common quality of public or impersonal nature. [Clause (zc) of Notification No. 12/2017]

Q.1.23 What constitutes "Rural area"?

"Rural area" has been defined in the notification as the area comprised in a village as defined in land revenue records excluding the area under any municipal committee, municipal corporation, town area

committee, cantonment board or notified area committee; or any area that may be notified as an urban area by the Central Govt. or a State Govt.

Q.1.24 Is supply of exempt goods considered taxable or non-taxable supply?

Supply of exempt goods is not the same as non-taxable goods. If only exempt goods are supplied, then registration requirement under Section 22 stands overruled by Section 23. And in view of the credit restriction in Section 17(2), exempt goods do not enjoy any unmerited advantage. 'Non-taxable goods' mean goods that are not leviable to GST such as alcoholic liquor and five petro-products. But existence of exemption itself indicates that there was a levy of tax, but exemption has been granted. Apart from this, even non taxable supplies (not leviable to tax) will also form part of the scope of exempt supplies.

Q.1.25 Which are the commodities which have been kept outside the purview of GST?

Article 366(12A) of the Constitution as amended by 101st Constitutional Amendment Act, 2016 defines the Goods and Services tax (GST) as a tax on supply of goods or services or both, except supply of alcoholic liquor for human consumption. So alcohol for human consumption is kept out of GST by way of the definition of GST in the Constitution. Five petroleum products viz. petroleum crude, motor spirit (petrol), high speed diesel, natural gas and aviation turbine fuel have temporarily been kept out and GST Council shall decide the date from which they shall be included in GST.

Q.1.26 Whether transactions in securities are taxable under GST?

Securities have been specifically excluded from the definition of goods as well as services. Thus, transaction in securities shall not be liable to GST. However, activities which result in arranging or facilitating transaction in securities are to be considered to be falling within the ambit of GST.

Q.1.27 Whether supplies made without consideration will also come within the purview of supply under GST?

Yes, but only those activities which are specified in Schedule I to the CGST Act / SGST Act. The said provision has been adopted in IGST Act as well as in UTGST Act also. In cases where the inputs/ capital

goods sent for job work are not returned within the specified time limit, the supplies made by the principal to job worker will also be deemed to be a supply.

Q.1.28 Are all goods and services taxable under GST?

Supplies of all goods and services are taxable except alcoholic liquor for human consumption. Supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be taxable with effect from a future date. This date would be notified by the Government on the recommendations of the GST Council.

Q.1.29 Who are the persons liable to take a Registration under the GST Law?

As per Section 22 of the CGST/SGST Act 2017, every supplier (including his agent) who makes a taxable supply i.e. supply of goods and / or services which are leviable to tax under GST law, and his aggregate turn over in a financial year exceeds the threshold limit of twenty lakh rupees shall be liable to register himself in the State or the Union territory of Delhi or Puducherry from where he makes the taxable supply.

In case of four special category States (Manipur, Mizoram, Nagaland & Tripura), this threshold limit for registration liability is ten lakh rupees.

Besides, Section 24 of the Act mentions certain categories of suppliers, who shall be liable to take registration even if their aggregate turnover is below the said threshold limit of 20 lakh rupees.

On the other hand, as per Section 23 of the Act, an agriculturist in respect of supply of his agricultural produce as also any person exclusively making supply of non-taxable or wholly exempted goods and/or services under GST law will not be liable for registration.

Q.1.30 What is aggregate turnover?

As per section 2(6) of the CGST/SGST Act “aggregate turnover” includes the aggregate value of:

(i) all taxable supplies,

(ii) all exempt supplies,

(iii) exports of goods and/or service, and,

(iv) all inter-State supplies of a person having the same PAN.

The above shall be computed on all India basis and excludes taxes charged under the CGST Act, SGST Act, UTGST Act, and the IGST Act. Aggregate turnover shall include all supplies made by the Taxable person, whether on his own account or made on behalf of all his principals.

Aggregate turnover does not include value of supplies on which tax is levied on reverse charge basis, and value of inward supplies.

The value of goods after completion of job work is not includible in the turnover of the job-worker. It will be treated as supply of goods by the principal and will accordingly be includible in the turnover of the principal.

Q.1.31 Which are the cases where registration is compulsory?

The following categories of persons are required to be registered compulsorily irrespective of the threshold limit:

i) persons making any inter-State taxable supply;

ii) casual taxable persons making taxable supply;

iii) persons who are required to pay tax under reverse charge;

iv) persons who are required to pay tax under sub-section (5) of section 9;

v) non-resident taxable persons making taxable supply;

vi) persons who are required to deduct tax under section 51;

vii) persons who make taxable supply of goods or services on behalf of other registered taxable persons whether as an agent or otherwise;

viii) Input service distributor (whether or not separately registered under the Act);

ix) persons who supply goods, other than supplies specified under Section 9(5), through such e-commerce operator who is required to collect tax at source under section 52;

x) every electronic commerce operator who is required to collect tax at source under section 52

xi) every person supplying online information and data base retrieval services from a place outside India to a person in India, other than a registered person;

In addition, the Government may notify other person or class of persons who shall be required to be registered mandatorily.

The Government, however, has granted exemption from compulsory registration vide Notification no. 56/2018-Central Tax dated 23/10/2018 (casual taxable person making taxable supplies of handicraft goods where the aggregate value of such supplies, does not exceed the amount of aggregate turnover above which a supplier is liable to be registered) and Notification no. 65/2017-Central Tax (Rate) dated 15/11/2017 (supplier of services through an e-commerce platform having an aggregate turnover not exceeding an amount of twenty lakh rupees or ten lakh rupees in case of "special category States" other than the State of Jammu and Kashmir.).

Q.1.32 If a person is operating in different States, with the same PAN number, whether he can operate with a single Registration?

No. Every person who is liable to take a Registration will have to get registered separately for each of the States where he has a business operation and is liable to pay GST in terms of Section 22(1) of the CGST/SGST Act.

Q.1.33 Is there a provision for a person to get himself voluntarily registered though he may not be liable to pay GST?

Yes. In terms of Section 25(3), a person, though not liable to be registered under Section 22 or section 24 may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered taxable person, shall apply to such person.

Q.1.34 Is it necessary for the UN bodies to get registration under GST?

Yes. In terms of Section 25(9) of the CGST/SGST Act, all notified UN bodies, Consulates or Embassies of foreign countries and any other class of persons so notified would be required to obtain a unique identification number (UIN) from the GST portal. The structure of the said ID would be uniform across the States in conformity with GSTIN structure and the same will be common for the Centre and the States. This UIN will be needed for claiming refund of taxes paid on notified

supplies of goods and services received by them, and for any other purpose as may be notified.

Q.1.35 What is the responsibility of the taxable person supplying to UN bodies?

The taxable supplier supplying to these organizations is expected to mention the UIN on the invoices and treat such supplies as supplies to another registered person (B2B) and the invoices of the same will be uploaded by the supplier.

Q.1.36 What is the taxable event under GST?

The taxable event under GST shall be the supply of goods or services or both made for consideration in the course or furtherance of business. CGST and SGST/ UTGST will be levied on intra-State supplies. IGST will be levied on inter-State supplies. The taxable events under the existing indirect tax laws such as manufacture, sale, or provision of services shall stand subsumed in the taxable event known as 'supply'.

Q.1.37 What is a taxable supply?

A 'taxable supply' means a supply of goods or services or both which is chargeable to goods and services tax under the GST Act.

Q.1.38 What are the necessary elements that constitute supply under CGST/SGST Act?

In order to constitute a 'supply', the following elements are required to be satisfied, i.e.-

(i) the activity involves supply of goods or services or both;

(ii) the supply is for a consideration unless otherwise specifically provided for;

(iii) the supply is made in the course or furtherance of business;

(iv) the supply is a taxable supply; and

(v) the supply is made by a taxable person.

Q.1.39 Are self-supplies taxable under GST?

Inter-State self-supplies such as stock transfers, branch transfers or consignment sales shall be taxable under IGST even though such transactions may not involve payment of consideration. Every supplier

is liable to register under the GST law in the State or Union territory from where he makes a taxable supply of goods or services or both in terms of Section 22 of the CGST Act. However, intra-State self-supplies are not taxable provided they do not opt for separate registration for their multiple places of business.

Q. 1.40 What is meant by zero rated supply under GST?

Zero rated supply means export of goods and/or services or supply of goods and/or services to a SEZ developer or a SEZ Unit.

Q.1.41 Will import of services without consideration be taxable under GST?

As a general principle, import of services without consideration will not be considered as supply under GST in terms of Section 7. However, import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business, even without consideration will be treated as supply in terms of Sl. No.4 of Schedule I.

Q.1.42 What are the inclusions specified in Section 15(2) which could be added to Transaction Value?

The inclusions specified in Section15(2) which could be added to transaction value are as follows:

a) Any taxes, duties, cesses, fees and charges levied under any statute, other than the SGST/CGST Act and the Goods and Services Tax (Compensation to the States for Loss of Revenue) Act, 2016, if charged separately by the supplier to the recipient;

b) Any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods and/or services;

c) Incidental expenses, such as commission and packing, charged by the supplier to the recipient of a supply, including any amount charged for anything done by the supplier in respect of the supply of goods and/or services at the time of, or before delivery of the goods or as the case may be supply of the services;

d) Interest or late fee or penalty for delayed payment of any consideration for any supply;

e) Subsidies directly linked to the price excluding subsidies provided by the Central and State Government.

Q.1.43 What is the Scheme of Taxation under GST?

The Scheme of Taxation under GST can be explained as follows :

STAGE-1	To begin with we have to assess whether the sale of goods & services rendered falls under the definition of **goods** or **services** under GST Act and if yes, whether they are excluded to be outside the purview of GST as per ****Schedule-III** of GST Act.
STAGE-2	If the sale of goods or supply of services is covered under the definition of goods & services and are not notified to be outside the coverage of GST, then we have to assess whether the supply of goods or services falls within the scope of supply as defined under the CGST Act, 2017.
STAGE-3	Once it is determined, that supply of goods & services falls under the definition of 'scope of supply' then we have to find out the aggregate turnover subject to GST and for which we have to determine the total value of exempt supply, taxable supply and zero rated supply.
STAGE-4	Once we have determined the aggregate turnover, then we have to assess the requirement of registration under GST.
STAGE-5	Once we are registered then we have to follow the operational requirements under GST Act i.e. collection of tax, submission of return, etc.

**** Schedule III** provides a list of services which shall be outside the purview of GST but this list does not include the services provided by an Educational Institution.

Schedule III includes –

1. Services by an employee to the employer in the course of or in relation to his employment.
2. Services by any court or Tribunal established under any law for the time being in force.

3. (a) The functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;

   (b) The duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

   (c) The duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.

4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.

5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

6. Actionable claims, other than lottery, betting and gambling.

7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.

8. Supply of warehoused goods to any person before clearance for home consumption.

9. Supply of goods in case of high sea sales.

Explanation1..—For the purposes of paragraph 2, the term "court" includes District Court, High Court and Supreme Court.

Explanation 2.—For the purposes of paragraph 8, the expression “warehoused goods” shall have the same meaning as assigned to it in the Customs Act, 1962

Chapter 2

Supply and Business Activity of NPOs under GST

Q.2.1 Section 2(17)(a) states that business shall include activities even without pecuniary benefit; will that imply that all activities of NPOs where revenue is generated shall come under the scope of GST?

NPOs may carry out different activities with or without revenue. In GST, for any activity to be considered as supply, it has to first to pass the test of business under section 2(17)(a) of the Act and should also be covered within the 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 of 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 thereby that the 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 the erstwhile VAT laws where liability was cast on dealers. A dealer is one who is in the ***business*** *of buying and selling. That means 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, t*hen 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 be treated as business only if it has an element of *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. Therefore the only saving grace is to establish that such activity is not *“in the course or furtherance of business”.*

Q.2.2 What are the activities of an NPO which could be considered as Business Activity for the purposes of GST?

All NPOs are subject to GST though the services / supply made by them may be any 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 and 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 the understanding, business like activities of an NPO may fall under following four categories:

(i) The primary activity carried on the basis of commercial principal with or without profit motive (micro credit, school, health etc.)

(ii) To achieve the primary objectives, incidental business activities are being carried by NPOs. For example, an NPO 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 the last three types 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 *"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 subjected to 18% GST, i.e., all educational services have been treated to be within the scope of GST unless specifically exempted. The question that arises is, 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.

Q.2.3 Is there any difference in the applicability of GST between the primary activity and incidental activity of an NPO if both have a component of supply and consideration?

Yes, incidental business activities of an NPO are activities which are inherently *"in the course or furtherance of business"* as such activities generate income/revenue for advancement of the primary activities. Therefore, all incidental business activities of an NPO are subject to GST.

The incidental business activity of a charitable organization shall be covered under GST. This aspect has also been clarified vide Advance Ruling order dt.14/06/2018 by Mumbai GST Advance Ruling Authority in the matter of *Shrimad Rajchandra Adhyatma Satsang Sadhna*

Kendra,No.GST-ARA-41/2017-18/B-48. The Authority has ruled that incidental business activity of exempt organisation also shall be subject to GST. In this AR it was decided that incidental activities like selling of CDs and DVDs etc. of a religious organisation was covered under GST. Though the ruling is silent about the primary activities of a religious or charitable organisation, still it seems to have followed the principles laid down by Supreme Court in the case of *CIT v. Andhra Chamber of Commerce* [1965] 55 ITR 722 where it was held that incidental activities can be conducted with profit motive to generate revenue for the primary activity.

The above advance ruling explained and distinguished the applicability of the Supreme Court's verdict in *CST v. Sai Publication Fund* [2002] 258 ITR 70 where it was held that if the main activity is not business, then any transaction incidental or ancillary would not normally amount to "business". However, the ratio of Supreme Court verdict will still apply for the primary activities of the NPOs. If they are able to sustain their charitable character, then the primary activity cannot be treated as "*in the course or furtherance of business".*

The primary activity of the charitable organizations can be subjected to GST only if it can be considered as any one of the following namely *trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity* "*in the course or furtherance of business".*

The Supreme Court held in the case of *CIT v. Andhra Chamber of Commerce* [1965] 55 ITR 722 that only the predominant object for which the organization was created is to be considered for the purpose for determining whether the nature of activities fall within the scope and ambit of 'charity'. In this case the Supreme Court clarified that incidental business activity of a charitable organisation can be conducted with profit motive to generate revenue. Therefore, in the light of the aforesaid, incidental business activity being conducted with a motive to generate revenue should be treated as business activity attracting GST.

The Advance Ruling Authority in the matter of *Shrimad Rajchandra Adhyatma Satsang Sadhna Kendra* (supra) has also confirmed the same.

However, for the GST applicability on the principal activity of a charitable organization it becomes important to establish that such

activity is *"in the course or furtherance of business"; otherwise* GST would not apply.

Q.2.4 What is the meaning of the phrase "In the course or furtherance of business" for the purposes of Indirect Taxes?

In the case of *CST v. Sai Publication Fund* [2002] 258 ITR 70/122 Taxman 437 (SC), the Supreme Court while interpreting the word "business" in the context of Section 2(5A) of the Bombay Sales Tax Act, 1959 held that the inclusion of incidental or ancillary activity in the definition of business pre-supposes the existence of trade, commerce and business. Thus, if the dominant activity of the assessee was not business then any incidental or ancillary activity also would not fall within the definition of business. In that case, the Supreme Court was examining the issue as to whether the activity of the trust in bringing out and selling a publication to spread the message of Sai Baba would make the assessee trust a dealer. The Supreme Court also referred to various other decisions wherein it was held that if the principal object or purpose of an assessee was not business then an incidental activity would also not be eligible to sales tax and constitute the assessee as a dealer.

From an Indirect Tax perspective it is worthwhile to refer the case of *Institute of Chartered Accountants in England & Wales* v. *Customs and Excise Commissioners* [1999] 1 W.L.R. 701, where the House of Lords also examined the expression 'business' with reference to the question as to whether the Institute of Chartered Accountants in England & Wales was carrying on any "economic activity" for the purpose of the Value Added Tax, 1994 and held as under:-

"Although differences between them may arise, it seems to me that the Appellants were right in their case to accept that "The expression business, it is accepted, represents economic activity". It is not necessarily sufficient (though it may often be sufficient in different contexts) that money is paid and a benefit obtained, performing on behalf of the state this licensing function is not the carrying on of a business.

In relation to the Directive, the tribunal said: "Any regulatory activity carried out under a statutory power for the purpose of protecting the public by supervising and maintaining the standard of practitioners in,

for example, the Financial Services field fall on the other side of the line from economic activities.

In the present case, I agree that that is entirely right and the same goes for "business" in the context of these three Statutes."

The Supreme Court has further considered the expression "business" in the case of *State of Andhra Pradesh* v. *Abdul Bakshi& Bros*. [1964] 15 STC 644 (SC), wherein it was held that the expression business was of indefinite import and in the taxing statute it is used in the sense of occupation and profession which occupies time, attention or labour of a person and is clearly associated with the object of making profit.

Q.2.5 What is the meaning of the term 'business' under Income-tax Act and common parlance?

There is no inherent difference in the meaning of business, though GST has provided an inclusive definition of business in terms of specific activities. The Act is silent with regard to what exactly a business or furtherance of business is and therefore we have to rely upon the existing judicial precedence in this regard.

The Madras High Court in *CIT* v. *K.S. Venkatasubbiah Reddiar* [1996] 221 ITR 18 had the occasion to discuss in detail as to what would constitute 'business' and 'profits and gains of business or profession'. Taking note of the definition of the term 'business' under section 2(*13*) of the Income Tax Act and some other statutes giving similar definitions, the Court expressed the following view :—

"In that connection, while dealing with the same question under the Hyderabad General Sales-tax Act, the Supreme Court in *State of Andhra Pradesh* v. *H. Abdul Bakshi& Bros.* [1964] 15 STC 644, observed as follows (head note):—

'The expression 'business' though extensively used is a word of indefinite import. In taxing statutes, it is used in the sense of an occupation or profession which occupies the time, attention and labour of a person, normally with the object of making profit. To regard an activity as business, there must be a course or dealings either actually continued or contemplated to be continued with a profit motive, and not for sport or pleasure'.

It is, therefore, clear that the two essential requirements for an activity to be considered as 'business' are :

(i) it must be a continuous course or activity; and

(ii) it must be carried on with a profit motive. . ." (p. 21).

In the light of the current GST Act, an activity shall be treated as business even if it is not a continuous course or activity. However, there is nothing in the Act to suggest that an activity carried without profit motive could be treated as business. In this context it may be noted a business house conducting activity without or inadequate consideration would not be treated as an exempt activity. For instance a trading organization may make slump or clearance sale and dispose off goods at loss; such transaction shall be treated as taxable supply only. On the other hand when an NPO not engaged in any business supplies necessary goods or services either free of cost or at a highly subsidized price then such transaction shall not be treated as "in the course or furtherance of business".

Q.2.6 What are the fundamental characteristics of a business activity?

According to Sampath Iyengar's Law of Income Tax (9th edition), a business activity has four essential characteristics.

Firstly, a business must be a continuous and systematic exercise of activity. Business is defined as an active occupation continuously carried on. Business **vocation** connotes some real, substantive and systematic course or activity or conduct with a set purpose.

Secondly the essential characteristic is profit motive or capable of producing profit. To regard an activity as business, there must be a course or dealings continued, or contemplated to be continued, normally with an object of making profit and not for sport or pleasure [*Bharat Development P. Ltd.* v. *CIT* [1982] 133 ITR 470 (Delhi)].

The **third** essential characteristic is that a business transaction must be between two persons. Business is not a unilateral act. It is brought about by a transaction between two or more persons.

And, **fourthly**, the business activity usually involves a twin activity. There is an element of reciprocity involved in a business transaction. In the said case reliance and reference was made to *State of Punjab* v. *Bajaj Electricals Ltd.* [1968] 2 SCR 536, *Khoday Distilleries Ltd.* v. *State of Karnataka* [1995] 1 SCC 574, *Bharat Development (P) Ltd.* v. *CIT* [1982] 133 ITR 470 /[1980] 4 Taxman 58 (Delhi), *Barendra Prasad Ray* v. *ITO* [1981] 129 ITR 295/6 Taxman 19 (SC), *State of Andhra*

Pradesh v. *H. Abdul Bakhi & Bros.* [1964] 15 STC 664 (SC), *State of Gujarat* v. *Raipur Mfg. Co.* [1967] 19 STC 1 (SC), *Director of Supplies & Disposal* v. *Member, Board of Revenue* [1967] 20 STC 398 (SC) and *Mrs. Sarojini Rajah* v. *CIT* [1969] 71 ITR 504 (Mad.) to explain the terms "trade, commerce or business".

The **fifth** characteristics of business was probably discussed by Supreme Court in the case of *CIT* v. *National Storage (P) Ltd.* AIR 1968 SC 70 where the court laid down the principle under which an activity could be treated as a commercial activity. The ratio of Supreme Court decision was that there has to be something in the nature of adventure or an activity in the nature of trade. The same Supreme Court case was relied upon by the Kolkata High Court in the case of *Director of IT (Exemption)* v. *Sahu Jain Trust* [2011] Tax Pub (DT) 2079 (Cal-HC) : (2011) 243 CTR 0131 : where the AO believed that the assessee was earning rent from the property which was obtained under the tenancy rights and thus income earned from the said exercise was not incidental to the objects of trust and accordingly such income was assessed as business income. It was observed that the question, therefore, which really arose is whether subletting of the tenanted accommodation available to assessee amounts to carrying on any business, i.e., is it carrying on any adventure or concern in the nature of trade, commerce or manufacture? If it was carrying on any adventure or concern in the nature of trade by sub-letting, then, section 11(4A) would be attracted. The true test is whether it is a simple letting out of the building or something more than letting out by bringing the case within the meaning of "carrying on any adventure or concern in the nature of trade or commerce"; there was no material on record to justify the simple sub-letting done by assessee in order to continue its charitable activity to be branded as a "business activity" and CIT(A) and the Tribunal below rightly did not bring the case within the purview of section 11(4A) and also in the past, assessee having received the benefit of exemption in respect of the rental income, there was no just reason for disallowing the relief claimed for the relevant assessment year when no fresh materials were brought in this year for coming to a different conclusion.

Remarks in the context of GST

The scope of business under section 2(17)(a) is very wide and it would include virtually any economic transaction with or without pecuniary

benefit provided it is conducted as any one of the following: trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit. In other words, the transaction should be towards promoting trade, commerce, manufacture ……. Therefore, unless the primary activity of an NPO is said to have a component of commerce, manufacture ……. or there is an apparent profit motive it cannot be said as one in 'furtherance of business' under GST.

Q.2.7 Can an activity of a charitable organisation be treated as "furtherance of business" only because some consideration is collected from the beneficiary? For example, an NPO incurs Rs. 1,000/- actual cost in training a beneficiary but charges only a token Rs. 100/- as fee.

Under the current scheme of GST it appears that the activity in the example taken shall be subjected to GST. However, it will be difficult to establish that an NPO engaged in charitable activity and running highly subsidised courses can be deemed to be engaged in "*in the course or furtherance of business*". Though the GST Act provides that inadequacy of consideration would not result in any GST exemption, such law will apply only if it is established that such activity is towards "furtherance of business".

The issue which remains to be interpreted is

(i) whether an activity conducted without profit motive by a charitable organisation can be treated as "furtherance of business" only because it has an element of supply or with or without inadequate consideration.

(ii) If such activity cannot be treated as "*in the course or furtherance of business*", then will it matter whether there is an element of supply or inadequate consideration.

It may be held that an NPO engaged in legitimate charitable activity without profit motive cannot be subjected to GST only if there is a component of supply or consideration, unless it is established that such activity is "*in the course or furtherance of business*".

Q.2.8 What are the taxes that are levied on an intra-State supply?

In terms of Section 9 of the CGST Act, 2017, intra-State supplies are liable to CGST. In terms of Section 9 of the SGST Act, 2017, intra-

State supplies are liable to SGST. In terms of Section 7 of the UTGST Act, 2017, intra-State supplies effected by a taxable person located in Union Territory (within the Union Territory) will be liable to UTGST. Therefore, in case of intra-State supplies relating to State or Union Territory, CGST and SGST or CGST and UTGST will be applicable respectively.

Q.2.9 Is it necessary to distinguish whether a particular supply involves supply of goods or services or both?

Yes, the CGST Act, 2017 has certain provisions relating to supply of goods and supply of services *viz.,* Section 12 and Section 13 thereof provide for ascertaining the time of supply of goods and time of supply of services respectively. Similarly, separate provisions have been enacted for ascertaining the place of supply of goods and place of supply of services under the IGST Act, 2017. Further, the rate of tax applicable to supply of goods and supply of services are different. Accordingly, it is important to distinguish whether a particular transaction involves supply of goods or supply of services.

Q.2.10 How to distinguish whether a particular supply involves supply of goods or services or both?

Schedule II appended to the CGST Act, 2017 enlists the activities or transactions which are to be treated as supply of goods or supply of services. One may refer Schedule II with reference to Section 7 of the CGST Act to classify whether the transaction involves supply of goods or supply of services. In other words, where certain activities or transactions constitute a supply as per section 7(1) of the CGST Act, 2017, they shall be treated either as supply of goods or supply of services as referred to in Schedule II.

Q.2.11 Whether supply of goods or services without consideration is liable to tax?

The activities enumerated in *Schedule I* will qualify as supply even if made without consideration. Accordingly, such supplies in the absence of consideration are liable to tax. To illustrate, following are the activities which will qualify as supply in the absence of consideration and eventually would be liable to tax:

(i) Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.

(ii) Supply of goods or services or both between related persons or between distinct persons as specified in Section 25, when made in the course or furtherance of business:

Provided that gifts not exceeding Rs.50,000/-in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

(iii) Supply of goods—

(a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or

(b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.

Further the Board vide Circular No. 57/31/2018-GST dated 4.09.2018 has clarified the scope of principal-agent relationship in the context of Schedule I.

(iv) Import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

Hence, import of services by entities which are not registered under GST (say, where they are only making exempted supplies) but are otherwise engaged in business activities is taxed when received from a related person or from any of their establishments outside India.

Q.2.12 Whether gifts made by an employer to an employee will also qualify as supply?

The Explanation appended to Section 15, has clarified that employer and employee will be deemed to be related persons. Accordingly, in terms of clause 2 of Schedule I, gifts exceeding Rs.50,000/- by an employer to employee will be a supply, when made in the course or furtherance of business and will be liable to tax. In terms of the proviso to clause 2 of Schedule I, any gift for a value not exceeding Rs. 50,000/- in a financial year will not qualify as supply and as such will not be liable to tax.

Further, as per press release dated 10.07.2017, if services are provided free of charge to all the employees by the employer then the same will not be subjected to GST, provided appropriate GST was

paid when the services were procured by the employer. The relevant extract from the aforesaid press release is as under:

"Another issue is the taxation of perquisites. It is pertinent to point out here that the services by an employee to the employer in the course oror in relation to his employment is outside the scope of GST (neither supply of goods or supply of services). It follows therefrom that supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST. Further, the input tax credit (ITC) scheme under GST does not allow ITC of membership of a club, health and fitness centre [Section 17(5)(b)(ii)]. It follows, therefore, that if such services are provided free of charge to all the employees by the employer then the same will not be subjected to GST, provided appropriate GST was paid when procured by the employer. The same would hold true for free housing to the employees, when the same is provided in terms of the contract between the employer and employee and is part and parcel of the cost-to-company (C2C)."

Q.2.13 Whether supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc., printed with design, logo, name, address or other contents supplied by the recipient of such supplies, would constitute supply of goods or supply of services?

The Government vide Circular No. 11/11/2017-GST dated 20.10.2017 has clarified that supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc. printed with logo, design, name, address or other contents supplied by the recipient of such printed goods, are composite supplies and the question, whether such supplies constitute supply of goods or services would be determined on the basis of what constitutes principal supply.

Printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore such supplies would constitute supply of service falling under heading 9989 of the scheme of classification of services.

In the case of , supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. falling under Chapter 48 or 49, printed with design, logo etc. supplied by the recipient of goods but made using physical inputs including paper belonging to the printer, the predominant supply is that of goods and the supply of printing of the content [supplied by the recipient of supply] is ancillary to the principal supply of goods and therefore such supplies would constitute supply of goods falling under respective heading of Chapter 48 or 49 of the Customs Tariff.

Q.2.14 If an NPO is incurring losses against its supplies or incidental business activities, then will it be treated as supply and furtherance of business under GST?

Loss cannot be the criteria as to whether any supply is to be covered under GST or not. The supply of activity needs to be examined under the definition of scope of supply in order to determine the applicability of GST.

Q.2.15 An NPO registered under section 12AA of the Income-tax Act, is engaged in research work and the NPO is in loss for 25 years. Whether we can say that it is not working with business motive and hence not liable to GST?.

Coverage under GST does not depend upon whether the entity is making profit or incurring loss.. However, it will depend upon the nature of contract for undertaking the research work and the amount being received.

Q.2.16 Whether Sale of memorabilia or any trust publications by NPOs will come under the definition of business?

As per the meaning of supply one of the ingredients is to establish that a particular transaction is in the course or furtherance of business. The sale of books, articles, mementos etc. to generate revenue is an incidental business activity subject to the provisions of GST.

Further, the rate of tax applicable to books and journals is NIL. Advancement of Religion, Spirituality and Yoga is regarded as charitable activity covered in the exemption notification, provided the organisation is registered under 12AA of the Income Tax Act.

Q.2.17 In business the intent to make profit is an essential criteria. Does it mean that an NPO cannot have profit from its primary activity or such activities cannot be conducted on commercial basis?

Existence of profit motive is integrally related with business activity. In case of NPOs existence of profit is permissible but existence of profit motive is not permissible. An NPO may conduct its primary objectives and generate reasonable revenue.

The Supreme Court in *T.M.A. Pai Foundation* v. *State of Karnataka* (2002) 8 SCC 481 and *P.A. Inamdar*v. *State of Maharashtra* AIR 2005 SC 3226/[2005] SCC 537, and *Islamic Academy of Education* v. *State of Karnataka* [2003] 6 SCC 697 has held that charitable institutions can have their primary activities with a reasonable surplus (profit) without prejudice to their charitable character. The Supreme Court even specified that a profit of 6 to 15% was permissible for charitable organizations. It was emphatically clarified that the term 'charitable' did not imply that an organisation cannot have profit from its primary charitable activity. In these cases, the Supreme Court ruled that an educational institution cannot be treated as commercial institution only because fees were fixed by the institutions and considerable profit was also made at the end of the year. The Supreme Court has opined that 6 to 15% profit would not jeopardise the charitable character of an Institution.

Q.2.18 Is the definition of "business" different in the context of GST in case of NPOs ?

The term 'business' has not been conceptually defined under GST, though there is an inclusive definition of the activity/transactions covered under business. Therefore, the term 'business', conceptually, should be given the same meaning as is applicable under other taxing statutes or in common parlance. Section 2(17) defines 'business' as under:

(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) 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;

Q.2.19 As per section 2(17)(a) of the Act pecuniary benefit is not a mandatory requirement for the applicability of GST. Will Goods and Services, provided to poor beneficiaries, free of cost or concessional price, be treated as supply?

As discussed above a supply with or without pecuniary benefit is not the ultimate criteria for invoking taxes under GST. The supply should be *"in the course or furtherance of business".* Therefore any supply made free of cost to poor beneficiaries certainly cannot be treated as business and GST will not apply. However, when a supply is made at a concessional price then the onus will be on the charitable organisation to establish that such supply is not *"in the course or furtherance of business";* otherwise GST will be attracted.

Q.2.20 Can an NGO u/s 8 work on commercial basis and pay taxes on income and also GST?

Yes, an NPO can also engage in incidental business activity and pay GST as may be applicable. However, such business activity should be ancillary or incidental to the main object of the NPO. If the primary activity of the NPO is commercial then it may not sustain its 12AA registration under the Income Tax Act.

Chapter 3

Applicability of GST to Religious Organisations

Q.3.1 Can a religious organization be subjected to GST?

The exemption to religious organizations is not available. Conduct of any religious ceremony is exempt under Entry No. 13 of Notification No. 12/2017-Central Tax (Rate), dated 28th June, 2017 [Clause (a)].

However, all incidental income/supplies are not exempt and activities such as advertisement, renting etc. are subject to GST or any specific exemption thereof.

Q.3.2 Are all services provided by a charitable or religious entity exempt under GST?

No. Notification No. 12/2017—Central Tax (Rate) exempts services provided by entity registered under section 12AA of the Income Tax Act, 1961 by way of charitable activities. It may be noted that "advancement of *religion*, spirituality or yoga" has been covered as charitable activity under the aforesaid notification.

Q.3.3 What are the exemptions available for religious activities?

Notification. No. 12/2017—Central Tax (Rate) under Chapter 99 provides as under:

a) Services by an entity registered u/s. 12AA of the Income Tax Act, 1961 (43 of 1961) by way of advancement of religious programmes relating to –

   (i) advancement of religion, spirituality or yoga;

The said notification under *Heading 9963/9972/9995* also exempts services supplied by a person by way of:

(a) Conduct of any religious ceremony;

(b) Renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a charitable or religious trust under section 12AA of the Income tax Act, 1961 or a trust or an institution registered under sub clause (v) of clause

(23C) of section 10 of the Income Tax Act or a body or an authority covered under clause (23BBA) of section 10 of the said Income Tax Act.

Provided that nothing contained in entry (b) of this exemption shall apply to:

(i) Renting of rooms where charges are one thousand rupees or more per day;

(ii) Renting of premises, community halls, kalyanmandapam or open area, and the like where charges are ten thousand rupees or more per day;

(iii) Renting of shops or other spaces for business or commerce where charges are ten thousand rupees or more per month

Q.3.4 What is the Meaning of 'Religious Place'?

'Religious place' means a place which is primarily meant for conduct of prayers or worship pertaining to a religion, meditation or spirituality. [Clause (zy) of Notification. No. 12/2017].

Q.3.5 What is the Meaning of "Precincts"?

The Dictionary meaning of 'precincts' is an area within the walls of perceived boundaries of a particular building or place, an enclosed or clearly defined area of ground around cathedral, church, temple, college, etc. Similar provisions were there during Service Tax regime and in this regard TRU Circular No. 200/10/2016-Service Tax may be followed.

Q.3.6 Whether a religious organisation as an entity is outside the coverage of the term "person" under GST?

The term `person' has been defined under section 2(84) of CGST Act and it includes-

Individual, HUF and all kinds of entities whether incorporated or not, AOP incorporated outside India or a body corporate incorporated outside India, trust, society etc.

Hence all forms of legal entities are covered within the definition of 'person' and therefore all types of legal entities including religious organisations are covered within the definition of `person' under GST.

Q.3.7 Whether there is any exemption on the basis of location of the religious organization?

As the term `taxable territory' includes the whole of India, there is no exemption on the basis of place or location of the suppliers of goods & services. Thus, GST shall apply to the whole of India without any exclusion or exemption. Hence there is no exemption to any entity including religious organization on the basis of its location.

Q.3.8 Whether Religious services fall within the definition of the term goods & services' under GST?

(a) Goods [section 2(52)] means every kind of movable property. It includes–

- Actionable claim
- Growing crops
- Grass
- Things attached to or forming part of land which are agreed to be severed before supply or under a contract of supply

But excludes –

- Money
- Securities

(b) Services [section 2(102)] means anything other than goods, money and securities. It includes activities relating to the –

- Use of money or
- Its conversion by cash or by any other mode from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

From the definition of goods and services, it is clear that apart from money and securities all goods or activities are included either as a good or as a service since definition of service is so wide that it covers anything other than goods. The impact of this is that even land and building is covered within the definition of service.

The term `money' and 'securities' has also been defined under GST and is not covered within the preview of Goods and services under GST and has therefore remained outside the coverage of GST.

The term `money 'and 'securities' shall include – Currency, Shares, Stocks, Bonds, Debentures, Units, Govt. Securities, interest on loan, unsecured loans, etc.

Schedule III provides a list of services which shall be outside the purview of GST but this list does not include the services provided by a religious organisation.

Hence the definition of service is so wide to include all types of services including anything other than goods and therefore services provided by religious organisation falls within the meaning of service as defined under GST.

Q.3.9 Whether services provided by religious organization fall within the coverage of Scope of supply as per GST?

As per Section 7(1)(a), scope of supply includes all forms of supply i.e. sale, transfer, barter, exchange, license, rental, lease, disposal made or agreed to be made by a person for a –

a) consideration

b) in the course or furtherance of business

Hence to constitute a scope of supply, the supply should be for a consideration and it should be in the course or furtherance of business.

Hence if one can argue and establish that the services rendered by the religious organizations are neither in the course of business nor in the furtherance of business, then the services rendered by the religious organisations shall be outside the purview of GST without any further compliance.

It may be held that services provided by religious organisation registered u/s. 12AA of the Income Tax Act, 1961 may not be covered under GST as the religious services are not carrying on a business or for furtherance of business. Also, the constitution/bye laws of concerned religious organization does not allow it to carry on any business.

However the intention seems clearly in favour of covering the services in relation to religion within the ambit of GST as while notifying the list of exempt services, the Govt. has included the services rendered by religious organisation in the exempt list of services.

Thus, the intention is very clear for covering the services rendered by the religious organisation within the ambit of GST as the same is notified to be exempt through exemption notification.

However the fundamental issue as to " whether provision of religious services can be considered as carrying on or furtherance of business or not" is left for debate and it is being proceeded on the basis of understanding that for the time being services provided by religious organisations are covered within the definition of scope of supply.

Q.3.10 Will organisations not registered under section 10(23C) or 10(23BBA) or 12AA of the Income Tax Act, 1961 be taxed under GST in respect of income from religious ceremony?

As per the entry under Heading 9963/9972/9995, any service supplied by a person by way of conduct of religious ceremony, is exempt irrespective of the status of the person.

Q.3.11 Does Religious ceremony include organizing a birthday party?

Religious ceremony may include the performance of rituals at any spiritual place on the basis of faith and traditions. However birthday party independently may not be treated as a religious ceremony.

Q.3.12 In case an NPO is issuing entry tickets for any religious ceremony or event, does it become taxable under GST?

It may be noted that performance of any religious ceremony for any organisation is exempt from GST vide entry no 13 of notification no 12/2017. For such exemption, no other stipulation has been provided. Hence issue of entry ticket for the same would also be exempt from GST.

Further, entry fees upto Rs. 500/- is exempt in case the event is one among the specified items as per entry no 81 of the exemption notification 12/2017. However religious events are not covered there.

Q.3.13 Renting of shops by religious entity is exempt. Is it limited only to the religious activity or exempt irrespective of the activity for

which the shop is used because shops are normally used for business only and not for carrying on religious activities.

Renting of Shops by religious entity as per serial No 13 is exempt and no specific stipulation regarding use is provided. Even if no condition for use, has been prescribed, the charitable or religious trust or institution must be registered under section 12AA or 10(23C)or 10(23BBA) of the Income tax Act. However, the exemption was available to business and commercial use when the rental was below Rs 10,000 per month meaning thereby any shop if given on rent to non-commercial purpose the same would be exempt even if the rental exceeded Rs 10,000 per month.

Q.3.14 Whether Parking space given to a Contractor of a Temple Registered U/s 12AA of the Income Tax Act, 1961 would be supply and the amount received by the temple is liable for GST.

If the parking space has been given to a contractor by a temple registered under 12AA it is squarely covered under exemption vide serial no 13 of notification no 12/2017 wherein exemption would be available where the per day value of contract is less than Rs 10,000/- .If the above stipulation is satisfied then it is exempt from GST.

Q.3.15 What about articles not listed under exemption entry 148, 'puja samagri' ?

Articles given for consumption or adornment (food or flower) are exempt. Various other articles are also given after oblation to be worn or tied or carried along. These are not exempt due to the nature of the article and the limited extent when it qualifies as supply. Articles used for worship will be *puja samagri* but general articles that are occasionally used in a worship will not enjoy this exemption. For example, vermillion will be *puja samagri* because it is only used for worship.

Q.3.16 Whether Sale of memorabilia or any trust publications by religious organisations will come under the definition of business.

It may be noted *all NPOs including those mentioned in Notification no 12/2017* shall be subject to GST for incidental business activities. This aspect has also been clarified vide Advance Ruling order No. GST-ARA-41/2017-18/B-48 dtd. 14/06/2018 by Mumbai GST Advance

Ruling Authority in the matter of *Shrimad Rajchandra Adhyatma Satsang Sadhna Kendra*, wherein it has been ruled that incidental business activity of an exempt organisation shall also be subject to GST.

The above advance ruling explained and distinguished the applicability of the Supreme Court verdict in *CST v. Sai Publication Fund* [2002] 258 ITR 70 where it was held that if the main activity is not business, then any transaction incidental or ancillary would not normally amount to "business". However, the ratio of Supreme Court verdict will still apply for the primary activities of the NPOs and if they are able to sustain their charitable character then the primary activity cannot be treated as "*in the course or furtherance of business".*

However, similar activities may be conducted by supply of materials free of cost or at concessional price towards advancement of the primary object. Then the ratio of the Supreme Court decision in *Sai Publication (supra)* shall apply and such activity will not be treated as business activity.

Further, the rate of tax applicable to books and journals is NIL. Advancement of Religion, Spirituality and Yoga is regarded as charitable activity covered in the exemption notification, provided the organisation is registered under 12AA of the Income tax Act.

Q.3.17 Will religious organizations be subject to GST for renting out properties?

If a religious organization provides its property on rent then the rental income shall be exempt subject to the following conditions under Entry No. 13 of Notification No. 12/2017-Central Tax (Rate), dated 28th June, 2017 [Clause (b)]:

— Renting of rooms where charges are one thousand rupees or less per day;

— Renting of premises, community halls, Kalyanmandapam or open area, and the like where charges are INR 10,000 or less per day;

— Renting of shops or other spaces for business or commerce where charges are INR 10,000 or more per month.

The above exemptions are not available to Organizations not registered under section 10(23C) or 10(23BBA) or 12AA of the Income Tax Act, 1961.

Q.3.18 A religious trust is having a temple and other properties under its management and has given them on rent. Discuss its taxability?

(a) Rooms having charges of Rs 900/ per day – exempt

(b) Rooms having charges of Rs 1000/ per day- taxable

(c) Kalyanmandap Rs 10,000/- per day for religious ceremony to a family- taxable

(d) Open area, Rs 10,000/- per day for marriage ceremony to a family- taxable

(e) Community hall Rs 10,000/- per day for business event - taxable

(f) Open area, Rs 10,000/- per day given to another religious trust to celebrate religious puja.- taxable

(g) Renting of shops adjacent to the temple for business purpose Rs 8000/-per month- not taxable

(h) Renting of shops adjacent to the temple for business purpose Rs 10000/-per month- taxable

(i) Renting of shops adjacent to the temple for non-business purpose at Rs 10000/-per month- Not taxable.

Q.3.19 What about other services provided by religious institutions such as (i) bus service for pilgrims, (ii) advertisement hoarding in the premises or publications, (iii) admission fee to events/functions etc.

Under entry no 13 of notification no 12/2017 it is provided that "services by a person by way of conduct of any religious ceremony" is exempt from GST. The Service tax law also covered similar exemption then. Hence bus services for pilgrims if directly linked to a religious ceremony would be exempt. Similarly, admission fees collected for events or functions would be exempt only if such event or function is part of religious ceremony. Further, advertisement hoarding or publications need to be tested as to whether or not it falls under the religious ceremony activity.

However, where the activities of the above nature are purely incidental and not directly related to any religious ceremony, the same would be taxable under GST.

Q.3.20 Is GST applicable on organizing religious tour or yatras?

Under Entry No. 60 of Notification No. 12 of 2017 only specific activities in this regard have been exempted. The services provided by Kumaon Mandal Vikas Nigam Ltd. Or Haj Committee of India or a State Haj Committee constituted under the Haj Committee Act, 2002 in respect of a religious pilgrimage facilitated by the Government of India, under bilateral arrangement, only are exempt from GST. Other such activities shall be taxable.

Q.3.21 Is GST Applicable on medication camp or other services provided by religious organisations for a charge?

Where Religious organisations organise any activity for a fee, such services are not covered under the exemption notification. Therefore such services shall be subject to GST.

Q.3.22 Is GST applicable on running of public libraries by religious and charitable organisations?

GST is not applicable on running of public libraries by religious and charitable organisations. This activity is specifically excluded by way of entry No. 50 of Notification No. 12/2017- Central Tax Rate (and is applicable for everyone, including charitable trusts).

Chapter 4

GST on Educational and Medical Institutions

Q.4.1 What constitutes "Education" for the purposes of GST?

"Education" is not defined in the CGST Act. However, the education material issued by GST Department refers to the Supreme Court decision in *Loka Shikshana Trust v. CIT*[1975] 101 ITR 234 (SC) and defines education as a process of training and developing knowledge, skill and character of students by normal schooling which results in a recognised degree.

The GST law also seem to have imported the same definition of the term "Education" as was used for the purposes of granting exemptions under Income Tax law. The scope of education is relatively narrow in India and only those training and courses which result in a recognised degree are considered as "Education".

The Supreme Court in the case *Loka Shikshana Trust v. CIT (supra)* had provided the above definition of education. However, there seems to be a difference in understanding with regard to the application of GST to educational activity. It seems to have been presumed that if an activity is not covered under the scope of education as per the Supreme Court definition then it automatically becomes a taxable activity under GST. However, the Supreme Court in the case *Loka Shikshana Trust v. CIT (supra)* did not state that an activity would become a commercial activity if it is not an educational activity. Such activity may still be a charitable activity under the head "advancement of any other general public utility".

Therefore, any activity which is technically not covered under the definition of education would not become a commercial activity subject to GST. Such activity has to be seen in the light of the provisions relating to business under section 2(17)(a) and the provisions relating to supply under section 7 for the applicability of GST. A charitable activity will not be subjected to GST only because it is technically not covered under the scope of the term education; it shall be further

subject to the fact whether it is in the course or furtherance of business or not.

Q.4.2 What are the applicable rates of tax for education and its ancillary services?

HSN	Description of services	Rate
9992	Education Services	18%
9992	Services provided – (a) by an educational institution to its students, faculty and staff; (b) to an educational institution, by way of, - (i) transportation of students, faculty and staff; (ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory; (iii) security or cleaning or housekeeping services performed in such educational institution; (iv) services relating to admission to, or conduct of examination by, such institution; upto higher secondary: Provided that nothing contained in entry (b)shall apply to an educational institution other than an institution providing services byway of pre-school education and education up to higher secondary school or equivalent	NIL
9992	Services provided by the Indian Institutes of Management, as per the guidelines of the Central Government, to their students, by way of the following educational programmes except Executive Development Programme: -	NIL

	(a) two year full time Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT) conducted by the Indian Institutes of Management; (b) fellow programme in Management; (c) five year integrated programme in Management.	
90 or any chapter	Technical aids for education, rehabilitation, vocational training and employment of the blind such as Braille typewriters, braille watches, teaching and learning aids, games and other instruments and vocational aids specifically adapted for use of the blind Braille instruments, paper etc.	5%
9023	Instruments, apparatus and models, designed for demonstrational purposes (for example, in education or exhibitions),unsuitable for other uses	28%

Q.4.3 What constitutes an "Educational Institution"?

Under GST law vide exemption notification 12/2017 educational Institution means an institution providing services by way of:

(i) pre-school education and education up to higher secondary school or equivalent;

(ii) education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;

(iii) education as a part of an approved vocational education course.

Within the term "educational institution", sub-clause (ii) covers institutions providing services by way of *education as a part of curriculum for obtaining a qualification recognised by any law* for the time being in force.

Within the term "educational institution", sub-clause (iii) covers

institutions providing services by way of education as a part of *approved vocational course,* and institutions providing the above courses will come within the ambit of the term educational institution.

Q.4.4 What would fall within the phrase "education as a part of curriculum for obtaining a qualification recognized by any law"?

In addition to the answer to Question No. 1 of this Chapter, we need to understand the meaning of "*education as part of curriculum for obtaining qualification recognised by law*". GST on services being a legacy carried forward from the Service Tax regime, the explanation given in the Education guide of 2012 can be gainfully referred to understand the meaning of the term which reads as under;

"It means that only such educational services are in the negative list as are related to delivery of education as 'a part' of the curriculum that has been prescribed for obtaining a qualification prescribed by law. It is important to understand that to be in the negative list the service should be delivered as part of curriculum. Conduct of degree courses by colleges, universities or institutions which lead grant of qualifications recognized by law would be covered. Training given by private coaching institutes would not be covered as such training does not lead to grant of a recognized qualification.

Are services provided by way of education as a part of a prescribed curriculum for obtaining a qualification recognized by a law of a foreign country covered in the negative list entry?

No. To be covered in the negative list a course should be recognized by an Indian law."

Q.4.5 What constitutes an "Approved vocational education course"?

Notification No. 12/2017- Central Tax (Rate) dated 28th June, 2017, defines approved vocational education course as under:

An "approved vocational education course" means, -

(i) a course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Training or State Council for Vocational Training offering courses in designated trades notified under the Apprentices Act, 1961 (52 of 1961); or

(ii) a Modular Employable Skill Course, approved by the National

Council of Vocational Training, run by a person registered with the Directorate General of Training, Ministry of Skill Development and Entrepreneurship.

Q.4.6 Whether Educational/Medical Institution as an entity is outside the coverage of the term PERSON under GST?

The term `person' has been defined u/s. 2(84) of CGST Act and it includes:-

Individual, HUF and all kinds of entities whether incorporated or not, AOP incorporated outside India or a body corporate incorporated outside India, trust, society etc.

Hence all forms of legal entity are covered within the definition of `person' and therefore all types of legal entities including Educational/Medical institutions are covered within the definition of Person under GST.

Q.4.7 Whether there is any exemption on the basis of location of the Educational/Medical Institution?

As the term `Taxable Territory' includes the whole of India, there is no exemption on the basis of place or location of the suppliers of goods and services. Thus, GST shall apply to the whole of India without any exclusion or exemption. Hence there is no exemption to any entity including Educational/Medical Institution on the basis of its location.

Q.4.8 Whether Educational/Medical services fall within the definition of the term `goods & services' under GST?

a) Goods [section 2(52)] means every kind of movable property. It includes–

- Actionable claim
- Growing crops
- Grass
- Things attached to or forming part of land which are agreed to severed before supply or under the contract of supply

But Excludes –

- Money
- Securities

b) Services [section 2(102)] means anything other than goods, money and securities. It includes activities relating to the –

- Use of money or
- Its conversion by cash or by any other mode from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

From the definition of goods and services, it is clear that apart from money and securities all goods or activities are included either as a good or as a service since definition of service is so wide that it covers anything other than goods. The impact of this is even land and building is covered within the definition of service.

The term `money' and 'securities' has also been defined under GST and is the only item not covered within the preview of Goods and services under GST and has therefore remained outside the coverage of GST.

The term `money and securities' shall include – Currency, Shares, Stocks, Bonds, Debentures, Units, Govt. Securities, interest on loan, unsecured loans, etc.

Schedule III provides a list of services which shall be outside the purview of GST but this list does not include the services provided by an Educational/Medical Institution.

Hence the definition of service is so wide that it includes all types of services including anything other than goods and therefore services provided by Educational/Medical institution falls within the meaning of service as defined under GST.

Q.4.9 Whether providing Educational/Medical services falls within the coverage of Scope of supply as per GST?

As per Section 7(1)(a), scope of supply includes all forms of supply i.e. sale, transfer, barter, exchange, licence, rental, lease, disposal made or agreed to be made by a person for a –

a) Consideration

b) In the course or furtherance of business

Hence to constitute a scope of supply, the supply should be for a consideration and it should be in the course or furtherance of business.

c) Hence if one can argue and establish that the services rendered by the education/medical institution are neither in the course of business nor in the furtherance of business, then the services rendered by the education/medical institution shall be outside the purview of GST without any further compliance.

d) It may be held that services provided by Educational/Medical institution registered as a charitable organisation and also registered u/s. 12AA of the Income Tax Act, 1961 may not be covered under GST as educational/medical services are not carrying on as a business or for furtherance of business.

e) However the intention seems clearly in favour of covering the services in relation to Education/medical within the ambit of GST since while notifying the list of Exempt services, Govt. has included the services rendered by Educational/Medical institution in the exempt list of services.

Therefore, the intention is very clear for covering the services rendered by the Educational/Medical institution within the ambit of GST as the same is notified to be exempt through exemption notification.

However the fundamental issue as to "whether provision of educational/medical services can be considered as carrying on or furtherance of business or not" is left for debate and it is being proceeded on the basis of understanding that for the time being services provided by Educational/Medical institutions are covered within the definition of scope of supply.

Q.4.10 Whether this exemption as per Chapter 99 is applicable only to an entity registered u/s. 12AA?

This exemption is based upon the status of service provider and also on the basis of specified services and therefore, only an entity, registered u/s. 12AA of the Income-tax Act and providing the specified services, can be covered under this exempt notification, meaning thereby if similar services are provided by an entity registered u/s.

10(23C) of the Income Tax Act, 1961 or by other institution, then this part of exemption notification will not be applicable.

Q.4.11 Whether this exemption as per Chapter 99 will overlap with the exemption provided as per Chapter 9992 to an educational institution?

Yes, it may overlap to some extent if abandoned, orphaned or homeless children or the other category of person as mentioned in the circular are taking education in an educational institution covered through a separate section of exemption notification.

Q.4.12 Whether private coaching centres and other unrecognized institutions can avail the GST exemptions?

It is to be noted that only those institutions whose operations conform to the specifics given in the definition of the term "Educational Institution", would be treated as one and entitled to avail exemptions provided by the law.

This would mean that private coaching centres or other unrecognized institutions, though self-styled as educational institutions, would not be treated as educational institutions under GST and thus cannot avail exemptions available to an educational institution.

Q.4.13 Whether services of canteen, repairs and maintenance provided by a private body to educational institutions are taxable?

As per the exemption Notification, following services provided to an educational institution providing services by way of pre-school education or education upto higher secondary school or equivalent services, shall be exempt –

- transportation of students, faculty and staff;
- catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory;
- security or cleaning or housekeeping services performed in such educational institution;
- services relating to admission to, or conduct of examination by, such institution; upto higher secondary;

Hence in view of the above exemption, though the services of canteen to the specified educational institution shall be treated as exempt services, services of repair& maintenance can be subject to GST.

Q.4.14 Whether all services provided by Management Institution are exempt under GST.

Output services related to the recognised courses, such as AICTE approved programs provided by Management Institutions would be exempt. Executive Development Programs and other non recognised courses run by such institutions are specifically excluded, hence such courses would be subject to GST.

Q.4.15 In the light of the available exemptions what is the position with respect to the auxiliary input services of educational institutions?

Regarding, input services, it may be noted that where output services are exempt, the Educational institutions may not be able to avail credit of tax paid on the input side. The four categories of services known as Auxiliary Education services, which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, have been exempt (as per Notification No. 12/2017-Central Tax (Rate)). Auxiliary education services other than what is specified above would not be entitled to any exemption. The exemption also comes with a rider. Such services are exempt only for educational institutions providing services by way of education up to higher secondary or equivalent. (from pre-school to HSC). Thus if such auxiliary education services are provided to educational institutions providing degree or higher education, the same would not be exempt. For instance, the services of conducting admission tests for admission to colleges in case of educational institutions providing qualification recognized by law for the time being in force shall not be liable to GST.

Q.4.16 Whether education services are under reverse charge?

No, Education Services are under forward charge. Therefore, GST shall be paid by the supplier of services.

Q.4.17 What will be the Place of Supply of Educational Services where location of supplier of services and the location of the recipient of services are in India?

As per the place of supply provisions for services under section 12 of the IGST Act, education services primarily came under the general rule, which specifies three situations as under:

(i) when the services were made to a person registered under GST,

then the location of such person (i. e. Executive training services provided by IIM, Ahmedabad to M/s X limited registered in the state of Karnataka, the place of supply would be Karnataka)

(ii) when the services were made to a person not registered under GST, then the address on record available (i.e. If Mr X a salaried employee residing in Odisha undergoes an executive program from IIM, Ahmedabad, the place of supply would be Odisha)

(iii) when the services were made to a person not registered under GST, and no address is available (i.e. in the above example of Mr. X , if the address is not available the place of supply would be at Ahmedabad.

Q.4.18 What will be the Place of Supply of Educational Services in case of specific events, where location of supplier of services and the location of the recipient of services is in India?

As per section 12 of the IGST Act 2017, certain specific situations have been specified where the place of the event would be regarded as place of supply.

As per section 12(6) of the IGST Act, 2017, the place of supply of services provided by way of admission to an educational or any other place and services ancillary thereto, shall be the place where the event is actually held or such other place is located.

As per section 12(7) of the IGST Act, 2017, the place of supply of services provided by way of, — (a) organisation of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events; or (b) services ancillary to organisation of any of the events or services referred to in clause (a), or assigning of sponsorship to such events, –

(i) to a registered person, shall be the location of such person;

(ii) to a person other than a registered person, shall be the place where the event is actually held and if the event is held outside India, the place of supply shall be the location of the recipient.

Q.4.19 What will be the Place of supply of Educational Services where the location of the supplier of services or the location of the recipient of services is outside India?

In general, in the above situation section 13 of the IGST Act has been made applicable for establishing the place of supply. The general provisions say that the place of supply would be the location of service recipient. If it is not available then the place of supply would be the location of the service provider. However, there are special situations where the place of supply would be different.

As per section 13(3) where the services were provided to an individual or to any organisation where the individual is required to be physically present, then the place of supply would be the actual place of performance of such services. For example, a student from London undergoes an executive MBA Course at IIM, Ahmedabad; the course requires class room coaching to be held at Ahmedabad. The place of supply of service would be Ahmedabad. However, if the course is an online course where physical presence is not at all required, the place of supply would be London.

Q.4.20 What will be the Place of Supply of Educational Services in case of specific events, where location of supplier of services and the location of the recipient of services is outside India?

As per section 13(5) of the IGST Act, 2017, the place of supply of services supplied by way of admission to, or organization of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation, shall be the place where the event is actually held.

Q.4.21 How do the provisions relating to Composite and Mixed supply apply to Educational services?

Boarding schools provide service of education coupled with other services like providing dwelling units for residence and food. This may be a case of bundled services if the charges for education and lodging and boarding are inseparable. Their taxability will be determined in terms of the principles laid down in section 2(30) read with section 8 of the CGST Act, 2017. Such services in the case of boarding schools are naturally bundled and supplied in the ordinary course or business. Therefore, the bundle of services will be treated as consisting entirely of the principal supply, which means the service which forms the predominant element of such a bundle. In this case since the predominant nature is determined by the service of education, the

other service of providing residential dwelling will not be considered for the purpose of determining the tax liability and in this case the entire consideration for the supply will be exempt.

Q.4.22 Suppose in the above case the fees were separable does it make any difference. If the boarding school also has day scholars who do not avail the lodging and food facilities does the answer change?

In the above case the charging for various services separately does not itself kept the services out of composite levy. For composite levy the services or goods are being provided in conjunction with each other and one among them would be a principal supply. Here in this case education is the principal supply and hence the whole amount would be regarded as education services and exemption as applicable to education is also applicable to other charges.

Further the school is also having day scholars and if it is presumed that the staying and food facility are purely optional and a matter of choice at the end of students to avail or not, the composite levy may not apply and individual taxation need to be tested in case of individual goods and services. Staying services and provision of food are services coming under GST. Entry No. 66 of exemption notification no 12/2017 says "that services provided by an educational institution to its students, faculties and staff" are exempt. This means even if the services are not eligible as composite along with educational services, the services were otherwise exempt .

Q.4.23 In the above case, the boarding school also has day scholars who do not avail the lodging and food facilities. The school also sells books, school uniforms, shoes etc. for students, which are separately charged. Is GST attracted?

In continuation of the earlier answer where reference was made to the exemption notification No. 12/2017 wherein it has been clarified that even though specific services are taxable, they remain exempt because of entry 66 of the said notification. However with respect to goods the exemption notification is not applicable. Therefore sale of articles like books, school uniform, shoes are taxable in the hands of school and cannot be exempted. Input tax credit in such a case would be available.

It is important to note that, in case the school uniform, shoes etc. were provided to the students as a single pricing and compulsorily to each and every student, the same would be coming under composite supply and exemption could be claimed. However the onus is on the organization to substantiate its case for exemption.

Q.4.24 How do the provisions of GST apply in cases where a dual qualification is provided by an institution wherein only one of them is recognized by law?

Provision of dual qualifications is in the nature of two separate services as the curriculum and fees for each of such qualifications are prescribed separately. Service in respect of each qualification would, therefore, be assessed separately.

If an artificial bundle of service is created by clubbing two courses together, only one of which leads to a qualification recognized by law, then by application of the rule of determination of taxability of a supply which is not bundled in the ordinary course of business, it shall be treated as a mixed supply as per the provisions contained in section 2(74) read with section 8 of the CGST Act, 2017. The taxability will be determined by the supply which attracts highest rate of GST.

However incidental /auxiliary courses provided by way of hobby classes or extra-curricular activities in furtherance of overall well-being will be an example of naturally bundled course and therefore treated as composite supply. One relevant consideration in such cases will be the amount of extra billing being done for the unrecognized component vis-a-vis the recognized course. If extra billing is being done, it may be a case of artificial bundling of two different supplies, not supplied together in the ordinary course or business and therefore will be treated as a mixed supply, attracting the rate of the higher taxed component for the entire consideration.

Q.4.25 The following clarification given in the Education Guide 2012 on Service Tax shall apply under GST as well.

"*The supply of placement services provided to educational institutions for securing job placements for the students shall be liable to service tax. Similarly, educational institutes such as IITs, IIMs charge a fee from prospective employers like corporate houses/ MNCs, who come to the institutes for recruiting candidates through campus interviews in*

relation to campus recruitments. Such services shall also be liable to service tax."

Q.4.26 Trust registered u/s 12 AA of the Income-tax Act and running educational activity say BBA, MBA etc. MBA building is charging rent from BBA for utilisation of the premises. Whether GST is applicable?

A single trust is running both the activities of BBA and MBA. Hence any amount charged between these units shall not be treated as supply at all and not taxable. In case both the units are registered under GST separately (as distinct persons) then the amount so charged might be taxable under GST subject to specific facts and circumstances.

Q.4.27 Trust is registered u/s 12AA of the Income-tax Act having its head office in the State of Odisha. It carries on an educational activity by way of running MBA programme in the State of Odisha. Recently it also established its campus in the State of West Bengal. Discuss GST compliances.

Under Section 25 of CGST Act, both these establishments are to be treated as distinct persons even if both the establishments are under single trust. Any transactions held within the head office and West Bengal unit would require to be independently evaluated as to applicability of GST. The aforesaid shall apply only in the context of taxable activities of the two units. The normal educational activities which results in recognised degrees or otherwise exempt under GST will not be impacted.

Q.4.28 With reference to the above facts suppose the administrative, finance, accounting and HR activities were handled from Odisha head office for both the educational campus, is there any GST impact on it?

In case the activities are towards furtherance of business then as discussed the campus established in Odisha and the HO are in same State, there would be no GST impact presuming there is single registration obtained in Odisha. However with respect to the cost incurred at the Odisha office towards the activities pertaining to the West Bengal campus GST levy would be attracted.

Similar view was taken in the advance ruling in the case of *M/S Columbia Asia Hospitals Private Limited* No. KAR ADRG 15 / 2018 Dated : 27th July 2018 wherein it was held as under:

"The activities performed by the employees at the corporate office in the course or in relation to employment such as accounting, other administrative and IT system maintenance for the units located in the other states as well i.e. distinct persons as per Section 25(4) of the Central Goods and Services Tax Act, 2017 (CGST Act) shall be treated as supply as per Entry 2 of Schedule I of the CGST Act."

Further, such support services are not educational services and shall not be eligible for exemption under entry 66 of notification no 12/2017, available to educational institutions. Further, input tax credit if any attributable to such taxable services would be available.

Q.4.29 Whether GST is attracted on hospitals managed by Charitable trusts or otherwise?

Health care services by a clinical establishment, an authorized medical professional or paramedics and services provided by way of transportation of a patient in an ambulance are exempt. These exemptions are made available to any person irrespective of whether it is a charitable or not.

Q.4.30 Whether services provided by way of training or coaching is exempt under GST?

The exemption notification exempts services by way of training or coaching in recreational activities relating to:

(a) Arts or culture, or

(b) Sports by charitable entities registered under section 12 AA of the income tax Act.

Thus, services provided by way of training or coaching in recreational activities relating to arts or culture or sports such as dance ,music, painting, literary activities ,drama etc. of any school ,tradition or language or any of the sports, by a charitable entity will be exempt from GST.

Q.4.31 Will imparting training of first aid will be covered as charitable activities under clause "(B) public awareness of preventive health, family planning or prevention of HIV infection".

Imparting training of first aid might be covered under preventive health awareness program. Hence, it would be a charitable activity and if the provider of service is registered under section 12AA of the Income tax Act, the value of such services, will be exempt from GST.

Q.4.32 Are University text books exempt?

Exemption is granted to printed books [sl.no.119 of Notification No.2/2017-CT] and this would cover University books.

Q.4.33 What is the scope of exemption to education?

As per the Notification No.12/2017 dt. 28/06/2017, the following types of services in relation to education or training are exempt :

Chapter 99 :-

a) Services by an entity registered u/s 12AA of the Income Tax Act, 1961 (43 of 1961) by way of advancement of educational programmes or skill development relating to –

   i) Abandoned, orphaned or homeless children;

   ii) Physically or mentally abused and traumatized persons;

   iii) Prisoners; or

   iv) Persons over the age of 65 years residing in a rural area

Heading 9992 :-

b) Services provided –

   i) by an **educational institution to its students, faculty and staff;**

   ii) to an **educational institution**, by way of,-

   - transportation of students, faculty and staff;
   - catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory;
   - security or cleaning or housekeeping services performed in such educational institution;
   - services relating to admission to, or conduct of examination by, such institution; upto higher secondary;

- Provided that nothing contained in entry (b) shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent;

Educational Institution means an institution providing services by way of,- (i) pre-school education and education up to higher secondary school or equivalent; (ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force; (iii) education as a part of an approved vocational education course

Heading 9992 :-

c) Services provided by the Indian Institutes of Management, as per the guidelines of the Central Government, to their students, by way of the following educational programmes, except Executive Development Programme: -

i) two year full time Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT) conducted by the Indian Institute of Management;

ii) fellow programme in Management;

iii) five year integrated programme in Management.

Heading 9992/9983/9991:-

d) Any services provided by, _

i) the National Skill Development Corporation set up by the Government of India;

ii) a Sector Skill Council approved by the National Skill Development Corporation;

iii) an assessment agency approved by the Sector Skill Council or the National Skill Development Corporation;

iv) a training partner approved by the National Skill Development Corporation or the Sector Skill Council, in relation to-

- the National Skill Development Programme implemented by the National Skill Development Corporation; or

- a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or
- any other Scheme implemented by the National Skill Development Corporation

Heading 9992 :-

e) Services provided by training providers (Project implementation agencies) under Deen Dayal Upadhyaya Grameen Kaushalya Yojana implemented by the Ministry of Rural Development, Government of India by way of offering skill or vocational training courses certified by the National Council for Vocational Training.

Heading 9996 :-

f) Services by way of training or coaching in recreational activities relating to-

   i) arts or culture, or

   ii) sports by charitable entities registered under section 12AA of the Income-tax Act.

Q.4.34 What is the extent to which '*health care*' is exempt?

As per Notification No. 12/2017 dt. 28/06/2017, the following types of services in relation to public health care are exempt:

Chapter 99

a) Services by an entity registered under section 12AA of the Income-tax Act, 1961 (43 of 1961) by way of public health care relating to -

   (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;

Heading 9993

b) Services provided by the cord blood banks by way of preservation of stem cells or any other service in relation to such preservation.

c) Services by way of-

(i) **health care services by a clinical establishment, an authorised medical practitioner** or para-medics;

(ii) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.

"Health care services" means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma;

"Clinical establishment" means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases;

"Authorised medical practitioner" means a medical practitioner registered with any of the councils of the recognised system of medicines established or recognised by law in India and includes a medical professional having the requisite qualification to practice in any recognised system of medicines in India as per any law for the time being in force.

Q.4.35 Whether services provided by senior doctors/consultants/ technicians hired by the hospitals are covered under health care services or not?

The Government *vide Circular 32/2018 dated 12th February 2018* has provided that the services provided by senior doctors/ consultants/ technicians hired by the hospitals, whether as employees or not, are healthcare services which are exempt.

Q.4.36 What is the taxability of food supplied by the hospitals and clinics?

The Government *vide Circular No.32/2018-GST dated 12-02-2018* has provided that food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare and not separately taxable. Other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable.

Q.4.37 Whether services provided by Industrial Training Institutes on account of vocational training or conduct of examination for a fee/consideration or services in relation to conduct of examination are taxable under GST?

As per *Circular No. 55/29/2018 dated 10-08-2018,* if the education provided by these ITIs is approved as vocational educational course, then private ITIs would qualify as educational institutions as defined under *Para 2(y) of Notification No. 12/2017 -Central Tax (Rate) dated 28-06-2017* and shall not be liable to GST. Such approved vocational courses have been defined under Para 2(h) of the said notification. However, if the services provided are in respect of trades other than designated trades, such services would be liable to GST.

If such ITIs are providing services in relation to conduct of examination or admission to an examination for a fee/consideration in case of designated services for self or to any other educational institution, such services shall be exempt *vide Entry (aa) and (b(iv)) under S. No. 66 of Notification No. 12/2017 Central Tax (Rate) dated 28-06-2017 respectively.* If these services or admission to or conduct of examination is provided for trades other than designated trades, such services are liable to GST.

In case of Government ITIs, services provided shall be exempt as these are provided by Central or State Government to individuals *[S. No. 6 of Notification No.12/2017 CT (Rate) dated 28.06.2017]* and would cover both vocational training and examinations.

Q.4.38 Are training programmes exempt from GST where the expenditure is borne by Central Government?

Yes, under entry no 72 of rate Notification No 12/2017, services provided to the Central Government, State Government, Union territory administration under any training programme for which total

expenditure is borne by the Central Government, State Government, Union territory administration are exempt.

Q.4.39 What is the taxability of services consumed by hospital?

Services or goods consumed or received at hospital are not exempt from GST levy.

Q.4.40 What is the taxability of sale of medicine by hospitals?

Supply of medicine is taxable and hence any medicine procured by any hospital is taxable in normal trade parlance unless and until it is exempt in general. Medicines so procured at hospitals are normally consumed / utilized in three different ways. The first one is some of the medicines are consumed in the process of medical services by the hospital itself. In this respect the medicines or related goods are self consumed and no supply takes place ; however the ITC in this respect is required to be reversed. The second category of consumption is when the medicines are issued to the in-patients at the hospital in the course or their treatment and on the advise of doctors and as part and parcel of the medical treatment undergone. In this respect the supply of medicine would be regarded as composite supply and the medical services being the principal supply the complete transaction is exempt. However, ITC related to such exempt supply of medicine need to be reversed. The third category would be sale of medicine to outpatients or to general public. In this situation, the complete transaction of supply of goods is taxable.

Q.4.41 When a Hospital provides medicine to patients staying in the hospital for treatment, whether it is taxable and .will it be covered under composite supply?

Medicines supplied for treatment of patient admitted in the hospital (in-patient) would be regarded as composite supply as it is naturally bundled. Hence, would be regarded as composite supply in conjunction with principal supply, i.e. medical services. Hence, would also be exempt from tax under GST.

Q.4.42 What is the GST implication on Medical store and Canteen services operated by Hospital (registered u/s 12AA of Income Tax Act)?

As regards supply of medicine from Medical store at a hospital the answer to the just preceding question may be referred to. Regarding

canteen services, when the food is supplied to the inpatients as part and parcel of medical treatment the same would be exempt. However supply of food to out patients, visitors etc would be liable to GST.

Q.4.43 Whether sale of spectacles in an eye hospital is covered under hospital services and exempt from GST.

Hospitals normally provide medical services which are exempt from Tax under GST. Further sale of medicine to outpatient are taxable even if sold by the hospital as it cannot be equated with medical services. Similarly, when a spectacle is supplied as part and parcel of the medical services i. e. spectacle or lenses supplied as a process of medical services during a cataract operation would be regarded as a composite supply and the principal supply being the medical services, the value of spectacles would also be exempt along with the medical services. However, when the spectacles are sold to outpatients after eye checkup and as per prescription of any doctor the same would not qualify as medical services and would be taxable. In this case Input tax credit, would be available.

Q.4.44 Is GST attracted in respect of Professional fees received from WHO (World Health Organisation) by an Indian Doctor for various surveys in India?

The services would not be exempt, but depending upon the situation the services may be regarded as export, and if so then the services can be Zero rated.

Q.4.45 Who is an "Authorised Medical Practitioner"?

"Authorised medical practitioner" means a medical practitioner registered with any of the councils of the recognised system of medicines established or recognised by law in India and includes a medical professional having the requisite qualification to practice in any recognised system of medicines in India as per any law for the time being in force. Refer para 2 of Notification No. 12/2017-CT (Rate) and No. 9/2017-IT (Rate) both dated 28-6-2017, effective from 1-7-2017.

Q.4.46 If a medical institution rents out its property to other institutions or commercial entities, will GST apply?

GST exemptions will not be available against other economic activities of a medical institution if such activities fall within the scope of GST.

Q.4.47 Is Waste treatment facility to medical establishment Services provided by operators exempt from GST?

Yes, common bio-medical waste treatment facility provided by operators to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto are exempt.

Q.4.48 Is services of cord blood bank exempt from GST?

Yes, Services provided by the cord blood banks by way of preservation of stem cells or any other service in relation to such preservation are exempt.

Q.4.49 Whether the services provided by profit-making body for pre-education shall be covered under exempt institution?

Exemption is given to *any service provided by the educational institution to its students, faculty and staff*. It is nowhere stated that the institution has to be a "not for profit" entity or any other specified entity. Therefore for the purpose of this exemption, it is irrelevant whether the entity is profit making body or other.

Q.4.50 Whether education services will be exempt only if it is provided to one's own students or it will be exempt even if the services are provided to the other students?

The notification reads "services provided by an educational institution to *its* student". If we go as per the language it is clear that the students availing the services provided by the educational institution must be of the same school/ institution providing such services.

Q.4.51 Whether international tours organized by the educational institution have to be linked with education upto higher secondary or education as a part of curriculum or as a part of approved vocational education?

(a) Firstly, the international tour by the institution should involve its students, faculty and staff.

(b) Secondly, *any service* provided by the educational institution is exempt and as per the definition of educational institution as

given above, it has to be an institution providing education upto higher secondary, and education as a part of curriculum for obtaining qualification recognised by any law, and education as a part of an approved vocational course.

(c) Therefore, the international tours need not necessarily be linked with education. But it has to be provided by the educational institution to its student, faculty or staff in order to get the exemption.

Q.4.52 What shall be the impact of donations received by the educational institution to fund certain capital expenditure or deficit under recurring expenses?

Any donation/grant received is outside the purview of GST as it is without consideration and also it is not in the course of furtherance of business. However it is to be ensured that no direct or indirect benefit accrues to the donor.

Chapter 5

Applicability of GST to Mutual Society

Q.5.1 What is a Mutual Society for the purposes of GST?

The term mutual society has not been defined in the GST Act. In common parlance a mutual society implies that the contributors and the recipients are one and the same. Therefore there cannot be a legal transfer or transaction between the mutual society and its member and such societies are not normally subjected to tax on the principle that a person cannot make a profit from himself. The Supreme Court in *Bangalore Club v. CIT* (Civil Appeal No.124 of 2007), dated 14/01/2013 held that the following principles govern mutuality:

- The principle of mutuality relates to the notion that a person cannot make a profit from himself. An amount received from oneself is not regarded as income and is therefore, not subject to tax; only the income which comes within the definition of section 2(24) is subject to tax (income from business involving the doctrine of mutuality is denied exemption only in special cases covered under clause (vii) of section 2(24) of the Income Tax Act.
- The concept of mutuality has been extended to defined groups of people who contribute to a common fund, controlled by the group, for a common benefit. Any surplus to that needed to pursue the common purpose is said to be simply an increase of the common fund and as such neither considered income nor taxable.
- Over time, groups which have been considered to have mutual income have included corporate bodies, clubs, friendly societies, credit unions, automobile associations, insurance companies and finance organizations.
- Mutuality is not a form of organization, even if the participants are often called members. Any organization can have mutual activities. A common feature of mutual organizations in general and of licensed clubs in particular, is that participants usually do not have property rights to their share in the common fund, nor

can they sell their share. When they cease to be members, they lose their right to participate without receiving a financial benefit from the surrender of their membership.

— A further, feature of licensed clubs is that there are both membership fees and, where prices charged for club services are greater than their cost, additional contributions. It is these kinds of prices and/or additional contributions which constitute mutual income. [Para 7].

— In case of mutuality, there has to be a complete identity between the class of participators and class of contributors; the particular label or form by which the mutual association is known is of no consequence. [Para 15].

— The second feature demands that the actions of the participators and contributors must be in furtherance of the mandate of the association. In the case of a club, it would be necessary to show that steps are taken in furtherance of activities that benefit the club, and in turn its members. [Para 19].

— The mandate of the club is a question of fact and can be determined from the memorandum or articles of association, rules of membership, rules of the organization, etc. However, the mandate must not be construed myopically. While in some situations, the benefits may be evident directly in the short-run, in others, they may be accruable to an organization indirectly, in the long-run. Space must be made for both such forms of interactions between the organization and its members. [Para 20]

— Thirdly, there must be no scope of profiteering by the contributors from a fund made by them which could only be expended or returned to themselves. [Para 21]

Q.5.2 What are the key takeaways from the Supreme Court ruling in the context of a mutual society?

The above Supreme Court ruling clearly explains the concept and the mechanism of mutual society. The important aspects to understand in this regard are:

— Mutuality is a principle and it can be found in any organisation, it simply implies that a group of persons contribute for their own purposes.

— The Supreme Court clearly provides that there must be no scope of profiteering by the contributors from a fund made by them which could only be expended or returned to themselves. In other words in a mutual society even if some surplus is made it does not result in any taxable transaction or furtherance of business.

— A licensed club where there are both membership fees and, where prices charged for club services are greater than their cost, additional contributions. It is these kinds of prices and/or additional contributions which constitute **mutual income.**

In the light of the various principles laid down by the Supreme Court a mutual society (fulfilling those conditions) cannot be said to be engaged in "furtherance of business".

Q.5.3 What are the services of a mutual society to its member which are subject to GST?

GST is levied on the event of a 'supply', the issue is whether an association can be supplying services to its own members. Under Section. 7(1) for the purposes of GST, 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.

(c) the activities specified in Schedule I, made or agreed to be made without a consideration'

In order to consider a transaction between a mutual society and its member to be taxable, such transaction must either be covered under clause (a) or clause (c) above.

Clause (a) covers 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. Therefore the following conditions must be fulfilled:

— There must be supply of goods or services or both for a consideration.

— And such supply must be in the course or furtherance of business

The term 'business' is defined u/s 2(17)(e) and which is relevant in this regard reads as under:

'(17) "business" includes—

(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'

From the above definition it is clear that the term "business" includes services by a mutual society of facilities or benefits to its members. Hence if the transaction between an association and its members satisfies the other condition that it is a supply of goods or services for a consideration, then the same will be taxed.

A transaction of providing services will be treated as supply provided it is established that the said service has been provided for a consideration

It is worthwhile to refer to the definition of "supplier" as provided u/s 2(105) and "recipient" as provided u/s 2(93). Both the definitions are reproduced below:

"Sec. 2(105) "supplier" in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied

Sec. 2(93) "recipient" of supply of goods or services or both, means —

(a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;

(b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and

(c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied."

From the above two definitions it is clear that there has to be a "recipient" of service and also a supplier of service. In other words there should be two persons for a transaction to be implicated under GST.

Q.5.4 Can a mutual society be treated as a distinct person different from its members?

The Supreme Court in the case *Bangalore Club* (supra) explained that a mutual society is a principle rather than an organisation and it works on the premise that one cannot transact with one self.

Finance Act, 1994 i.e. Service Tax Law as in existence before 01.07.2012 also provided for levy of tax on clubs/associations. The relevant provisions are as under:

Sec. 65(25a) "club or association" means any person or body of persons providing services, facilities or advantages, primarily to its members, for a subscription or any other amount.

[Explanation. — For the purposes of this section, taxable service includes any taxable service provided or to be provided by any unincorporated association or body of persons to a member thereof, for cash, deferred payment or any other valuable consideration :

(i) anybody established or constituted by or under any law for the time being in force; or

(ii) any person or body of persons engaged in the activities of trade unions, promotion of agriculture, horticulture or animal husbandry; or

(iii) any person or body of persons engaged in any activity having objectives which are in the nature of public service and are of a charitable, religious or political nature; or

(iv) any person or body of persons associated with press or media;]

The levy of Service Tax was challenged in the case *Ranchi Club Ltd v. Chief Commissioner of Central Excise and Service Tax [*W.P.(T) No. 2388 of 2007] and it was held as under*:*

"*If club provides any service to its members may be in any form including as mandap keeper, then it is not a service by one to another in the light of the decisions referred above as foundational facts of existence of two legal entities in such transaction is missing. However, so far as services by the club to other than members, learned counsel for the petitioner submitted that they are paying the tax."*

The Jharkhand High Court held that club or association is not distinct from its members and therefore service tax shall not be payable.

The Gujarat High Court in the case of *Sports Club of Gujarat Ltd v. UOI* [2013] 40 STT 486 (Guj.) also concurred with the Jharkhand High Court view that club and members are not distinct persons, levy of service tax on such clubs/associations is ultra vires.

Thereafter to nullify the above referred decisions w.e.f. 01.06.2012 clause (a) to Explanation 3 to Sec. 65B provided that an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons. Same is also reproduced for ready reference:

'Explanation 3. — For the purposes of this Chapter,—

(a) an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;'

After the deeming provisions were enacted the members were artificially treated as distinct from the mutual society and therefore Service Tax was leviable.

However, the definition of person under GST is provided u/s 2(84) and there is no deeming fiction to treat association and members as different persons. Therefore, the members of a mutual society cannot be treated as different from the society. However, in this regard we have to revisit the term 'business' as defined u/s 2(17)(e)which is relevant in this regard is as under:

'(17) "business" includes—

(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'

Section 2(17)(e) seems to be creating the distinction between member and the society only to the extent of use of **"*the facilities or***

benefits". In other words it seems that if any member uses the facilities of a mutual society, for instance a KalyanMandap, shall be subjected to GST. Or a member availing any benefit from the society. In this context we should understand that 'benefit' is something which is normally not due to a person. A benefit is something over and above the legitimate claim of each and every member. Therefore if a member is using, say, the restaurant of the club by paying a consideration (which may be restricted or concessional) then it should be treated as a taxable supply. In this case all the members of the society do not have a right to dine against the contribution already made as membership fees; the members can avail such facility by incurring additional cost.

However, there is nothing in the GST Act to suggest that the supply arising out of common contribution for a common cause which is uniformly and equitably available to all the members without any additional cost, shall be subjected to tax. The rulings of the Supreme Court in Bangalore Club (supra) and of the Jharkhand and Gujarat High Courts shall apply accordingly.

Q.5.5 Whether collection of fees/subscription from the members against which there are no direct facility/benefit to the members can be subject to GST?

The term 'Business' is defined under section 2(17)(e) and it includes 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. However, the Maharashtra Advance Ruling Authority in the case of *Lions Club of Kothrud Pune Charitable Trust*, vide its order No.GST-ARA-15/2018-19/B-71, Mumbai 25/07/2018 has held that there is no GST liability for the amount collected by individual Lions club and Lions District as these collections are for the convenience of Lion members and pooled together only for paying Meeting expenses and communication expenses. Relevant part of the order reads thus:

"since the amount collected by individual Lions clubs and Lions District is for convenience of Lion members and pooled together only for paying Meeting expenses & communication expenses and the same is deposited in single bank account. As there is no furtherance of business in this activity and neither any services are rendered nor are any goods being traded."

The AAR also observed that there is no furtherance of business in this activity and neither any services are rendered/ goods being traded.

In other words any services provided by the mutual society in the normal course to all the members is not treated as facility or benefit for the purposes of section 2(17)(e).

Hence, the services rendered by mutual benefit societies to its members is not to be subjected to GST. However while defining the term business under GST, under section 2(17)(e) any supply of benefit or facility by society to its members is considered as taxable supply; therefore there is a deeming effect of two different persons as far as supply of any benefit or facility by the society to its member is concerned. However, no such distinction has been made while defining the term `person' or the term `consideration' under the GST Act.

In the light of the above we need to distinguish supply between a mutual society and its members into two categories;

(i) services which are available to the members in the normal course, for example security services in housing society,

(ii) services which are in the nature of benefit or facility which may or may not be availed by the members, for example restaurant or accommodation facility offered by a club to its member which may not be uniformly availed by all the members.

It seems that section 2(17)(e) of the GST Act implicates the benefit or facility which the member may or may not avail from the society under the tax net. This matter continues to remain a subject matter of debate and subjudice before the Supreme Court.

The Supreme Court in the case *State of West Bengal and Others v. Calcutta Club Limited* [2016] 96 VST 20 (SC) also considered the applicability of Article 366(29A) and the matter of *"whether supply of food and beverages by incorporated club to its Permanent members amounts to sale"* has been referred to a larger bench.

Q.5.6 What are the issues under consideration before the larger bench of Supreme Court in the case *State of West Bengal and Others v. Calcutta Club Limited*?

In the case *State of West Bengal and Others v. Calcutta Club Limited* [2016] 96 VST 20 (SC) the Supreme Court held that the matter of

"whether supply of food and beverages by incorporated club to its Permanent members amounts to sale?" be referred to a larger bench of Supreme Court in the light of the following questions of law :

(i) whether the doctrine of mutuality was still applicable to incorporated clubs or any club after the insertion of Article 366(29A) in the Constitution of India,

(ii) whether the judgment of the court in *Joint Commercial Tax Officer v. Young Men's Indian Association* [1970] 26 STC 241 (SC) was still valid even after the Forty-sixth Amendment of the Constitution of India, and whether the decisions in *Cosmopolitan Club* [2009] 19 VST 456 (SC) and *FatehMaidan Club* [2008] 12VST 598 (SC) which remitted the matter applying the doctrine of mutuality after the Constitutional amendment could be treated as valid and

(iii) whether the Forty-sixth Amendment to the Constitution, by a deeming fiction provided that provision of food and beverages by incorporated clubs to their permanent members constituted sale liable to sales tax

Q.5.7 Explain clause (29A) in Article 366 of the Constitution inserted through (Forty-Sixth Amendment) Act, 1982 in the context of Mutual Benefit Society.

Clause (29A) provides that "" tax on the sale or purchase of goods" includes –

(e) a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuation consideration;"

The amendment therefore, provided that supply of goods to the member of Mutual Benefit Society shall be considered as sale of goods. However this amendment talks only about tax on supply of goods and does not talk about tax on supply of services.

Moreover, the Constitution (One Hundred and Fifteenth Amendment) Bill, 2011, proposed to delete clause (29A) in Article 366. However, the Bill which was introduced later and which lead to enactment of the Constitution (One Hundred and First Amendment) Act, 2016 did not delete that clause. Hence Clause (29A) still exists.

Q.5.8 Whether reimbursements received by housing society from the members towards the common maintenance charges can be

considered as amount received towards providing benefit/facility to its members?

The housing society normally undertakes individual responsibilities of the flat owners to run the common facilities smoothly on collective basis and monthly subscription are received to meet the common expenses therefrom and surplus if any is also being used for the upkeep and maintenance of the flats i.e. object for which the fund has been collected.

Hence the housing societies are not created for the purpose of providing benefit/ facilities to the members but are performing only those obligations which otherwise had to be performed by the individual flat owners. Therefore, the monthly reimbursement charges collected by the housing society should not be considered as received towards providing any benefit or facility to members. The Maharashtra Advance Ruling Authority in the case of *Lions Club of Kothrud Pune Charitable Trust*, vide Order No.GST-ARA-15/2018-19/B-71, Mumbai 25/07/2018 has held that there is no GST liability for the amount collected by a club as these collections are for the convenience of members and pooled together only for paying common expenses. The same ratio should apply to housing society.

Q.5.9 A society collects the following charges from the members on quarterly basis :

a) **Property Tax-actual as per Municipal Corporation of Greater Mumbai (MCGM)**

b) **Water Tax- Municipal Corporation of Greater Mumbai (MCGM)**

c) **Non- Agricultural Tax- Maharashtra State Government**

d) **Electricity charges**

e) **Sinking Fund- mandatory under the Bye-laws of the Co-operative Societies**

f) **Repairs & maintenance fund**

g) **Car parking Charges**

h) **Non Occupancy Charges**

i) **Simple interest for late payment**

Which of the above charges do not attract GST?

1. Services provided by the Central Government, State Government, Union territory or local authority to a person other than business entity, is exempt from GST. Hence Property Tax, Water Tax, if collected by the RWA/Co-operative Society on behalf of the MCGM from individual flat owners, then GST is not leviable.
2. Similarly, GST is not leviable on Non Agricultural Tax, Electricity Charges etc, which are collected under other statutes from individual flat owners. However, if these charges are collected by the Society for generation of electricity by Society's generator or to provide drinking water facility or any other service, then such charges collected by the society are liable to GST.
3. Sinking fund, repairs & maintenance fund, car parking charges, Non-occupancy charges or simple interest for late payment, attract GST, as these charges are collected by the RWA/Co-operative Society for supply of services meant for its members

Q.5.10 As per guidelines on maintenance charges upto Rs. 7,500/- no GST is applicable. Maintenance charges means only maintenance or collection of all charges?

This is applicable only to the reimbursements of charges or share of contribution up to an amount of Rs. 7500 per month per member for sourcing of goods or services from a third person for the common use of its members. Here, charges mean the individual contributions made by members of the society to avail services or goods by the society from a third party for common use. [*Entry 77(c) of notification no 12/2017 Central Tax (Rate) dated 28.6.2017 refers]**.**

Q.5.11 Where the monthly maintenance (all above charges) are below Rs. 7,500/-but yearly total collection exceeds Rs. 20 lakhs limit, whether GST is applicable?

Reimbursement of charges or share of contribution up to an amount of Rs. 7,500/- per month per member for sourcing of goods or services from a third person for the common use is not liable to GST. However, if the Co-operative society/ RWAs provide specific services of its own to its members or to any third party (e.g. use of community hall for social function by a non-member) cumulatively exceeds the threshold limit as per GST, then GST is leviable on such supply of services.

**[Service by an unincorporated body or a non- profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution – (a) as a trade union; (b) for the provision of carrying out any activity which is exempt from the levy of Goods and service Tax; or (c) up to an amount of seven thousand five hundred rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex.]*

Q.5.12 Is GST applicable to money paid for security services in housing colony developed?

YES it is taxable. It is assumed that the colony is making payment to the security agencies. However when the members are making payment to any housing society, the exemption of RS 7500/- per member per month would be applicable. The other legal nuances have been discussed in earlier questions.

Q.5.13 What is the implication of Circular No. 35/9/2018-GST) explaining the taxability between members of a Joint Venture?

The Tax Research Unit (TRU) has issued a (Circular No. 35/9/2018-GST) explaining the taxability between members of a Joint Venture. Relevant portion of the circular is reproduced below:

"GST is levied on intra-State and inter-State supply of goods and services. According to section 7 of CGST Act, 2017, 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, and includes activities specified in Schedule II to the CGST Act, 2017. The definition of "business" in section 2(17) of CGST Act states that "business" includes 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. The term person is defined in section 2(84) of the CGST Act, 2017 to include an association of persons or a body of individuals, whether incorporated or not, in India or outside India. Further, Schedule II of CGST Act, 2017 enumerates activities which are to be treated as supply of goods or as supply of services. It states in para 7 that supply

of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration shall be treated as supply of goods. A conjoint reading of the above provisions of the law implies that supply of services by an unincorporated association or body of persons (AOP) to a member thereof for cash, deferred payment or other valuable consideration shall be treated as supply of services. The above entry in Schedule II is analogous to and draws strength from the provision in Article 366(29A)(e) of the Constitution according to which a tax on the sale or purchase of goods includes a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration."

The Supreme Court in the case *Commissioner of Central Excise, Bolpur v M/s Ratan Melting & Wire Industries [*Civil Appeal No. 4022 of 1999 dated October 14, 2008] explained that circulars and clarifications issued by Government merely represent their understanding of the statutory provisions and should not be read as a statute. The relevant extract is as under:

"So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the Court to declare what the particular provision of statute says and it is not for the Executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law."

The above circular does not directly provide for taxing of self-consumption or self supply, the illustrations provided in the circular do not directly relate to a mutual society. The two illustrations provided in the circular are as under:

"Illustration A: There are 4 members in the JV including the operating member and each one contributes Rs 100 as part of their share. A total amount of Rs 400 is collected. The operating member purchases machinery for Rs 400 for the JV to be used in oil production.

Illustration B: There are 4 members in the JV including the operating member and each one contributes Rs 100 as part of their share. A total amount of Rs 400 is collected. The operating member thereafter

uses its own machine and performs exploration and production activities on behalf of the JV.

4.1 Illustration A will not be the subject matter of 'ST/GST' for the reason that the operating member is not carrying out an activity for another for consideration. In Illustration A, the money paid for purchase of machinery is merely in the nature of capital contribution and is therefore a transaction in money.

4.2 On the other hand, in Illustration B, the operating member uses its own machinery and is therefore providing 'service' within the scope of supply of CGST Act, 2017. This is because in this scenario, the operating member is recovering the cost appropriated towards machinery and services from the other JV members in their participating interest ratio."

The taxable Illustration B pertains to supply made by one of the JV members out of its own resources; in other words the operating member uses resources which are not common against charge to the JV. Therefore this circular does not directly implicate the supply out of commonly held resources of a mutual society.

This circular ends with the following words *"Difficulty if any, in the implementation of this circular may be brought to the notice of the Board."*

The above circular is silent about the definition of "supplier" as well as "recipient" before taxing a transaction u/s 7(1)(a). An association (mutual society) is covered under the scope of 'person' under section 2(84) of the GST Act; however, that does not imply that the members and the association are different and distinct persons. Further Article 366(29A) of the Constitution is only about deemed supply of goods and it does not cover supply of services.

Any transaction between an association and its members can be taxed u/s 7(1)(c) read with the activities specified in Schedule I made without consideration. Therefore, a self-supply should be covered under Schedule I. Clause 2 of Schedule I provides that supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business shall be taxable. It may be noted that members are not covered under section 25 as distinct persons. Hence the only thing to

be checked is whether an association and its members are related persons.

Following observations may be noted in reference to the above circular:

(a) The above circular has not considered the definitions of "supplier" as well as "recipient" before taxing a transaction u/s 7(1)(a). There must be two different persons to tax a transaction under the said provision. Even though an association of person has been included as person u/s 2(84) it does not imply that members of such association are different persons.

(b) The Circular has invoked the concept of deemed sale as provided under Article 366(29A) of the Constitution. It must be noted that clause (e) of said Article only enables to tax supply of goods by an association to its members as deemed sale. It does not enable to tax supply of service as a deemed service. Even para 7 of Schedule II covers only supply of goods by any unincorporated association. It does not cover supply of services.

(c) Invoking the concept of "deemed sale" should be harmonious between Schedule - II of the CGST Act, 2017 and Article 366(29A) of the Constitution.

Now, let us examine whether the transaction between an association and its members can be taxed u/s 7(1)(c). The said clause covers the activities specified in Schedule I, made or agreed to be made without a consideration. Self-supply to be taxable, must be covered under Schedule I. Entry number 2 of Schedule I provides that supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business shall be taxable. Members are not covered under section 25 as distinct persons. Therefore, we need to further ascertain whether an association and its members are related persons.

The Explanation u/s 15 of CGST Act, 2017 which defines related person is reproduced hereunder:

'Explanation. — For the purposes of this Act, —

(a) persons shall be deemed to be "related persons" if —

(i) such persons are officers or directors of one another's businesses;

(ii) such persons are legally recognised partners in business;

(iii) such persons are employer and employee;

(iv) any person directly or indirectly owns, controls or holds twenty-five per cent or more of the outstanding voting stock or shares of both of them;

(v) one of them directly or indirectly controls the other;

(vi) both of them are directly or indirectly controlled by a third person;

(vii) together they directly or indirectly control a third person; or;

(viii) they are members of the same family;

(b) the term "person" also includes legal persons;

(c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.'

The above explanation requires the existence of two or more persons who can be considered as related to each other. A mutual society and its members are the same because of principle of mutuality and they cannot be regarded as related persons. Therefore, the transactions between a mutual society and its members will not be covered within the scope of supply u/s 7 of the CGST Act, 2017 subject to the provisions of section 2(17)(e).