

NON PROFIT MAKING ENTITIES – A GST POINT OF VIEW

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There are Lacs of religious and charitable trusts in India. They may be Religious Temples, Halls or Dharamshalas, Charitable Trusts like schools, orphanages, Gau-shalas or other Non-Government Organisations like those whose purpose is child protection, women empowerment, etc. Hereinafter we will call them NPEs (Not for Profit-Making Entities).

Basic purpose of any such organisation is not doing any kind of commercial activity. Their motive is never that of profit making. But, they are always indulged in some or the other kind of activity for earning revenue, directly or indirectly. In this article, we will analyse NPEs and their revenue generating activities from GST point of view.

All NPEs carry out different activities for 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) of the CGST Act (hereinafter called the Act) and should be covered in scope of supply under section 7 of the Act.

First and foremost thing to be considered is clause (a) of section 2(17) of the Act which clearly states that for an activity to be considered as business, profit making is not a required condition. That means even if the activity is not for making any profit it can still fall under the term supply. So, any NPE can become liable to GST.

Now, let's look at scope of supply from NPE point of view. As per section 7(1) of the Act, 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.

So, major conditions to be satisfied for a transaction for it to become a supply will be:

- All forms of supply are covered. Exchange is not spared. Even disposal of any goods will become a supply under GST.
- For a consideration. These are the saving words. There should be a consideration for any transaction to come within the ambit of supply. Most of the activities of NPEs are without any consideration. So, it saves them in most of the cases.
- In the course or furtherance of business. So, any transaction must first satisfy that it is an activity for doing a business. Business has very vast definition and covers almost everything. However, course or furtherance of business has not been defined anywhere in the Act, so has to be considered as in common parlance.

We should also note that according to Schedule I of the Act, there can be some transactions that will be considered a Supply even if there is no consideration involved. From our topic's point of view, 2nd Para of the Schedule is important.

As per clause (iii) of Explanation to section 15 of the Act, employer and employee are related. So, any transaction with any employee will become a supply, unless it is covered by the proviso mentioned above that gifts upto Rs. 50,000/- a year to an employee will not be considered as supply.

Also, as per clause (v) and (vi) of the said Explanation, if the transaction is with any person who controls the NPE or the NPE controls any other person or both are controlled by some third person, then transaction will become a supply even though no consideration is involved. So, transaction with all trustees or managers can easily come within the scope of supply. Let's take a simple example. A temple gives a room to its trustee without any charges. It will become a supply and will be valued as per valuation rules. One may argue that it is not the business of the temple to give room on rent. Logically, it is true, but as per clause (c) of section 2(17), there is no need of volume, frequency, continuity or regularity of any transaction for it to become a "Business". There can be hundreds of such examples where some tiny transactions easily satisfy the test of "Business".

Registration:

As per section 22 of the Act, every supplier is liable to be registered:

- if he makes any taxable supply (and)
- if his aggregate turnover in a financial year exceeds Rs. 20 Lacs (Rs. 10 Lacs in special category States)

In short, 2 conditions need to be satisfied. First, there should be a taxable supply. Many of the supplies carried out by NPEs are covered under Nil rate of tax and thus are exempt supplies. Like, sale of “Pooja Samagri” is covered under Nil rate. So, in case the trust is supplying only Pooja Samagri, then it does not require registration even if the turnover of the same is above the threshold limit.

Second, the turnover should be more than Rs. 20 Lacs/ 10 Lacs. Important thing that should be kept in mind is that even if NPE generally supplies exempted/ Nil rated items; but if it supplies any other item in the course of business even if the value is very less, it will become liable to get registered. For example, an NGO has some extra space in its office that it gives on rent to someone for Rs. 50,000 per month and has other income of Rs. 20 Lacs from exempted activities; it will become liable to get registered because the aggregate turnover includes exempted supply.

Most Important Exemption:

Vide CGST Notification No. 12/ 2017 (Rate), dated 28/06/2017, Serial No. 1, Services by way of charitable activities by an Entity registered under section 12AA of the Income-tax Act, 1961, have been exempted.

This is a very important exemption provided by the Government and will immensely help many organisations. However, the organisation must be registered under specific clause of the Income Tax Act. Many religious and charitable trusts do not get themselves registered to avoid any head-ache of filing, etc. under Income Tax Act. They will ultimately lose the exemption provided by this notification.

Also, exemption is only for ‘Charitable Activities’. As per definition given in the relevant Notification:

“(r) “charitable activities” means activities relating to -

(i) public health by way of,-

(A) care or counseling of

(I) terminally ill persons or persons with severe physical or mental disability;

(II) persons afflicted with HIV or AIDS;

(III) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or

(B) public awareness of preventive health, family planning or prevention of HIV infection;

(ii) advancement of religion , spirituality or yoga;

(iii) advancement of educational programmes or skill development relating to,-

(A) abandoned, orphaned or homeless children;

(B) physically or mentally abused and traumatized persons;

(C) prisoners; or

(D) persons over the age of 65 years residing in a rural area;

(iv) preservation of environment including watershed, forests and wildlife;”

As per this definition, charitable activity mainly covers some health related activities, educational related activities, environment preservation activities and activities related to advancement of religion, etc. However, care has to be taken before considering any activity as charitable under this definition. Not all educational or health related activities are covered under this definition.

VARIOUS TRANSACTIONS FROM GST LENS-

Let's now look at different types of transactions that NPEs carry out from GST point of view.

Donations:

Donations do not come within the meaning of 'business' u/s. 2(17) of the Act as they are not in the nature of trade, manufacture, profession, vocation, etc. – again, there is no element of services embedded in a mere donation receipt. Therefore, donation receipts in the absence of

quid pro quo are outside the purview of GST. Donation receipts will also not be considered for calculation of total turnover.

Interest Income:

CGST Notification No. 12/ 2017 (Rate), dated 28/06/2017, exempts interest income from the ambit of GST. In the said Notification, Serial No. 27 reads as follows:

“Services by way of—

(i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services);”

Therefore, interest income received by the organisation under various SDs/FDs/RDs or in any other form will be exclusively exempted under GST, where interest or discount is the sole consideration.

However, interest income will remain a supply and thus should be included in total turnover. This makes it an important case as total turnover in many cases will increase, as interest is the major source of income of many NPEs. Such organisations may be selling some taxable goods. Though the amount might be very small, they will become liable to registration. Consequently, they have to follow the Act and all the applicable Rules like any commercial organisation.

Receipts from Trainings/ Seminars conducted:

As per CGST Notification No. 12/ 2017 (Rate), dated 28/06/2017, as amended via CGST Notification No. 2/ 2018 (Rate), dated 25/01/2018, Serial No. 66, Services provided by “Any educational institution” to its students, faculty and staff are exempted. So, unless the NPE comes under definition of educational institution its receipts from Trainings and Seminars will be taxable supply under section 7 and liable to GST. GST Rate for the same will be 18%.

Educational Services:

Some educational services are exempted while others are not. CGST Notification No. 12/ 2017 (Rate), dated 28/6/2017 as amended via CGST Notification No. 2/ 2018 (Rate), dated 25/01/2018, Serial No. 66 reads as:

“Services provided,-

(a) by an educational institution to its students, faculty and staff;

(aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee;

(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, Union Territory;

(iii) security or cleaning or house-keeping services performed in such educational institution;

(iv) services relating to admission to, or conduct of examination by, such institution;

(v) supply of online educational journals or periodicals;

Provided that nothing contained in sub-items (i), (ii) and (iii) of item (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.

Provided further that nothing contained in sub-item (v) of item (b) shall apply to an institution providing services by way of,-

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

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

Thus, there are two types of exemptions in this entry. Services provided by the educational institution and services received by educational institution. However, before that we need to understand what is an ‘educational institution’. As per CGST Notification No. 12/2017 (Rate), dated 28/06/2017:

“(y) “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;”

Services provided 'BY' educational institutions:

Any organisation satisfying the definition of educational institution as explained above, if supplies any services to its students, staff and faculty can enjoy the exemption from tax. Moreover, if the fee is for entrance exam, it will still come under exemption, even if it provided to anyone else. For e.g. ICAI providing educational services to course studying students will be exempt. However, if it is giving educational services like seminar for its members, it is taxable.

Services provided 'TO' educational institutions:

Now, let's come to the other side. Purpose of giving exemption to educational institutions is to reduce the cost of education so that it is affordable to all. However, if services received by educational institutions are liable to tax then it will beat the purpose of exemption. So, many services received by them have also been exempted.

However, there is something interesting to this side of exemption. Services like transportation, catering, house-keeping, security, etc. are exempted only if they are provided to institutions providing education up-to high-secondary schools and not all. While services of admission and examination received by all institutions are exempt. Also, the most confusing part is receipt of online journals etc. is exempt only for institutions other than schools and vocational training centres. This is quite confusing and purpose of the same is not understandable.

Moreover, by amending Serial No. 22 (Services by way of giving on hire), via CGST Notification No. 02/ 2018 (Rates), dated 25/01/2018 additional exemption is given to persons who give transport services to educational institutions up-to higher-secondary schools. Such transporters will get exemption from GST on hire charges if they use hired vehicle for transportation of students, faculty or staff of such schools. Interesting situation will arise again if a transporter uses same hired vehicle partly for such institutions and partly for other purposes. For e.g. a bus driver hires a bus and uses it for transportation of students in a school in the morning. While, in the evening the same bus is used for transportation of regular passengers. There is no clarification for such cases.

Healthcare Services/ Hospitals:

Public health is always a top priority for any Government, so it can't tax healthcare services. So, Serial No. 74 of Notification No. 12/ 2017-Central Tax (Rate), dated 28/06/2017, specifically provides for exemption on healthcare services. The entry reads as:

“Services by way of-

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

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

Important point to note here is that definition of health care services as per the notification specifically excludes hair transplant or cosmetic or plastic surgery, except when required due to any abnormality, injury, defect, etc. Now, consider a situation- a large hospital also has a plastic surgery department. It will be covered under taxable supply. Consequently, the hospital will need to get registered and all the provisions of the Act will become applicable to it.

Exemption entry and the definition of health care services are both silent about the room charges in hospital. However, Government has clarified through Circular No. 27/ 01/ 2018-GST dated 4/01/2018 that room charges are also exempt services.

Exemption is also provided to veterinary hospitals engaged in health care of animal and birds, via Serial No. 46 of the said notification.

Renting Services:

As per CGST Notification No. 12/ 2017(Rate), dated 28/06/2017, Serial No. 12 “Services by way of renting of residential dwelling for use as residence” are exempt; while, renting of commercial property, wedding halls, space, or renting of any space given for hoardings, etc. will attract GST at 18% rate. However, for renting service, there is another exemption entry at Serial No. 13 for NPEs, which reads as follows:

“Services 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 (hereinafter referred to as the Income-tax Act), 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.”

This exemption is only for those NPEs which are registered under specified clauses of the Income Tax Act which mainly cover religious and charitable trusts and NGOs. NPE may not be the owner and is just managing the property than also it can avail the exemption. However, maximum amount limit has been provided creating a road-block for many such NPEs. Exemption limits are Rs. 1,000/- for room rent, Rs. 10,000/- for community halls and Rs. 10,000/- per month for shops. Rents are quite high even in 2-tier and 3-tier cities now. There are many Dharamshalas or Community Centres which charge more than Rs. 10,000/- per day for any ceremony. In many cases, total rent includes electricity charges thus crossing the limit provided in the exemption. Such cases should be planned accordingly by such NPEs.

Also, since the word ‘precincts’ is not defined in Notification No. 25/ 2012-Service Tax, dated 20.6.2012, there were disputes in interpreting the scope of the said notification. It has been clarified vide Circular No. 200/ 10/ 2016-Service Tax that field formations may not take restricted view of the word ‘precincts’ and consider all immovable property of the religious place located within the outer boundary walls of the complex (of buildings and facilities) in which the religious place is located, as being located in the precincts of the religious place. The immovable property located in the immediate vicinity and surrounding of the religious place and owned by the religious place or under the same management as the religious place, may be considered as being located in the precincts of the religious place.

The exemption in GST is identical to the exemption entry in service tax; therefore, this clarification may also be applicable under GST regime.

Services by way of training or coaching in recreational activities

As per Serial No. 80 of Notification No. 12/ 2017-Central Tax (Rate), dated 27-Jun-2017, the NPEs enjoys another exemption relating to training or coaching in recreational activities. The entry reads as under-

“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 12AA of the Income-tax Act,”

Thus, training or coaching provided by NPEs in dance, music, art, literature, theatres, drama etc. or any of the sports will be exempt from GST.

Services by way of Right to Admission:

Many NPEs indulge in exhibition, dramas, and sporting events etc. which have entry fees. If no exemption is given, all such organisations will come within the ambit of GST. So, in the Notification No. 12/ 2017-Central Tax (Rate), dated 28/06/2017, Serial No. 81 as amended by Notification No. 2/2018-Central Tax (Rate), dated 25/01/2018, following exemption is provided:

“Services by way of right to admission to-

(a) circus, dance, or theatrical performance including drama or ballet;

(b) award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event;

(c) recognised sporting event;

(d) planetarium,

where the consideration for right to admission to the events or places as referred to in items (a), (b), (c) or (d) above is not more than Rs. 500 per person.”

So, if there is entry fee up-to Rs. 500/- at any of the events mentioned above, then they will be exempted from GST. Amount limit was Rs. 250/- which was increased to Rs. 500/- through amendment. This exemption entry seems specific and only for the services mentioned therein. So, any other services in nature of “right to admission” at any place for a consideration, which is not specifically covered above may not enjoy exemption. Now, comes the interesting point.

Even some religious places have some token entry fees. Amount charged may be quite low but the total of the same is way more than the prescribed limit of registration. There being a separate exemption entry for 'right to admission' a thought may arise whether entry fees at such religious places will be taxable or it will be covered under the definition of 'Charitable Activities' and can take benefit of Serial No. 1 of the main exemption Notification. Chances of litigation are surely there.

Receipts in Nature of Reimbursements:

Purpose of Trade Unions, Housing Societies, etc. is also not that of making profit. They incur expenses on behalf of all its members and charge their members to recover the expenses. So, it is a form of reimbursement rather than services. Therefore, in the CGST Notification No. 12/2017 (Rate), dated 28/06/2017 as amended by CGST Notification 2/2018 (Rate), dated 25/01/2018 following exemption entry is there at Serial No. 77:

“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.”

Important point to be noted here is clause (c). Only for residential societies, exemption limit is given up-to Rs. 7,500/- per month. If the association is an office-bloc, it will not be covered under this exemption.

Import of service by NPEs

As per Serial No. 10 of Notification No. 9/ 2017-Integrated Tax (Rate), dated 28-Jun-2017, any service received from a provider of service located in non-taxable territory by any entity registered under section 12AA of the Income-tax Act, 1961 for the purposes of providing charitable activities shall be exempt from GST. Thus, the charitable entity is not liable to pay GST on import of services under reverse charge mechanism. However, “charitable activities” shall have the same meaning as defined under paragraph 2(r) of the said notification. It is also specified in this entry that exemption shall not apply to online information and database access or retrieval services received by such charitable entities.

Sale of Memorabilia / Trust Publications:

Sale of memorabilia or any trust publications will come under the definition of business. Also, this being sale for a consideration will attract the provisions of “Supply” under section 7. Therefore, it will be liable for GST. However, Printed Books covered under HSN Code 4901 and Newspapers, periodicals & journals covered under HSN Code 4902 attract “Nil” rate of Tax. While Calendars covered under HSN Code 4910 attract 12% GST Rate. Also, there will be different rates depending upon the type of Memorabilia sold.

Many NPEs indulge in such supplies to cover many of their expenses. Sale of T-shirts, key-chains, etc. is quite common. These transactions will not always be covered under “Charitable Activities” as explained above. However, if such things are given as Souvenirs without charging any consideration for the same, it will be out of scope of supply. In such cases, the organisation should keep in mind that purpose of such supply should be in nature of any activity covered under the definition of “Charitable Activities”.

Now, consider a situation. An NPE has some bank deposits whose interest amounts to 19 Lac Rupees. However, for earning more income, it indulges in sales of calendars. Total of this sale is Rs. 2 Lacs only. Now, due to limit of 20 Lacs Rupees, the trust becomes liable to get registered and will need to charge GST on calendars.

Sale of some other Goods:

Nowadays, many religious institutions charge token money for sale of Prasadam. Considering this, Government has provided exemption through Serial No. 98 of Notification No. 2/2017-Central Tax (Rate), dated 28/06/2017. It covers Prasadam supplied by all religious places. Entry reads as:

“Prasadam supplied by religious places like temples, mosques, churches, gurudwaras, dargahs, etc.”

Also, Puja Samagri has been exempted via Serial No. 148 of the notification. Entry reads as:

Puja samagri namely,-

(i) Rudraksha, rudraksha mala, tulsikanthi mala, panchgavya (mixture of cowdung, desi ghee, milk and curd);

(ii) Sacred thread (commonly known as yagnopavit);

(iii) Wooden khadau;

(iv) Panchamrit,

(v) Vibhuti,

(vi) Unbranded honey

(vii) Wick for diya.

(viii) Roli

(ix) Kalava (Raksha sutra)

(x) Chandantika”

Receipts by the way of sale of scrap:

Once any NPE becomes liable to get registered under GST, even sale of scrap will become taxable supply under section 7, as it will be “in the course of business”.

Conclusion:

Most of the activities of NPEs are generally exempted. However, there may be some activities that can attract GST lens. Care should be taken while involving in any revenue-generating transactions. Also, activities mentioned above are undertaken by profit-making entities, nowadays. Like, there are many private schools and hospitals everywhere. The exemptions will be applicable to them also.

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Acknowledgements

We thank CA. Jaykumar P. Arlani for drafting this article and CA. Virender Chauhan for reviewing the same. For any queries, you may connect with CA. Jaykumar P. Arlani at idt@icai.in .

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