

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
 GST Bhavan, 8th floor, H-Wing, Mazgaon, Mumbai - 400010.
 (Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

- (1) Shri B. Timothy, Addl. Commissioner of Central Tax, (Member)
 (2) Shri B. V. Borhade, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id		27AAATK2046G1ZV
Legal Name of Applicant		KASTURBA HEALTH SOCIETY
Registered Address/ Address provided while obtaining user id		KASTURBA HEALTH SOCIETY SEVAGRAM ROAD SEVAGRAM, VARDHA - 442102
Details of application		GST-ARA, Application No. 120 Dated 04.02.2019
Concerned officer		Division Kalmeshwar, Commissionerate Nagpur - II.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Service Provision
B	Description (in brief)	The Applicant [KASTURBA HEALTH SOCIETY] is an institution Registered under the Registration of Societies Act, 1860 and also under The Bombay Public Trust Act, 1950 existing solely for imparting medical education till post-graduation, which is a Joint Venture having funding from Central Government @ 50%, State Government @25% and remaining 25% comes mainly by way of fees from students and recoupment charges from patients [essentially clinical material]. The Medical College is named as "MAHATMA GANDHI INSTITUTE OF MEDICAL SCIENCES" and its Clinical Laboratory is named as "KASTURBA HOSPITAL". The institution has a set up at village Sevagram.
	Issue/s on which advance ruling required	(i) classification of goods and / or services or both (iv) applicability of a notification issued under the provisions of the Act (v) determination of the liability to pay tax on any goods or services or both (vii) whether applicant is required to be registered under the Act (viii) whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term.
	Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.



PROCEEDINGS

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by KASTURBA HEALTH SOCIETY, the applicant, seeking an advance ruling in respect of the following questions.

- i. Whether the applicant, a Charitable Society having the main object and factually engaged in imparting **Medical Education**, satisfying all the criteria of "Educational Institution", can be said to be engaged in the business so as to cast an obligation upon it to comply with the provisions of Central Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017 in totality.
- ii. Whether the applicant, a Charitable Society having the main object and factually engaged in imparting **Medical Education**, satisfying all the criteria of "Educational Institution" is liable for registration under the provisions of section 22 of the Central Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017 or it can remain outside the preview of registration in view of the provisions of section 23 of the said act as there is no Taxable supply.
- iii. In a situation if above questions are answered against the contention of the applicant institution then **following** further questions are being raised for the kind consideration by the Honourable Bench.
 - a. Whether the fees and other charges received from students and recoupment charges received from patients (who is an essential clinical material for education laboratory) would constitute as "**outward supply**" as defined in section 2 (83) of The Central Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017 and if yes then whether it will fall in classification entry at Sr. No 66 or the portion of nominal amount received from patients (who is an essential clinical material for education laboratory) **at Sr. No. 74** in terms of Notification 12/2017 Central Tax-dt. 28/6/2017.
 - b. Whether the cost of Medicines and Consumables recovered from OPD patients along with nominal charges collected for Diagnosing by the pathological investigations, other investigation such as CT-Scan, MRI, Colour Doppler, Angiography, Gastroscopy, Sonography **during the course of diagnosis and treatment of disease** would fall within the meaning of "composite supply" qualifying for exemption under the category of "educational and/or health care services."
 - c. Whether the nominal charges received from patients (who is an essential clinical materials for education laboratory) towards an "Unparallel Health Insurance Scheme" to retain their flow at one end for the purpose of imparting medical education as a result to provide them the benefit of concessional rates for investigations and treatment at other end would fall within the meaning of "supply" eligible for exemption under the category of "educational and/or health care services."
 - d. Whether the nominal amount received for making space available for essential facilities needed by the students and staffs such as Banking, Parking, and Refreshment which are support **activities for attainment of main activities** and further amount received on



account of disposal of wastage **would** fall within the meaning of “supply” qualifying for exemption under the category of “educational and/or health care services.”

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression ‘GST Act’ would mean CGST Act and MGST Act.

2. FACTS AND CONTENTION – AS PER THE APPLICANT

The submissions, as reproduced verbatim, could be seen thus-

“STATEMENT OF RELEVANT FACTS HAVING A BEARING ON THE QUESTIONS RAISED

In order to decide, the questions raised by the Applicant Society, for advance ruling u/s 98 of MGST/CGST Act it is imperative that certain salient features, *that are needed to be considered with reference to the status of Applicant Society, where its main activity of Medical Education is substantially funded by the Government as a joint venture* and then to decide whether the said Society can be brought within the ambit of the provisions of the CGST/MGST Act, **particularly when there is no business activity carried out by the society. The related salient features are as under.**

a. Background of the Society vis-à-vis the purpose of existence.

- i. The Constitution of India had promised implementation of effective health delivery system to the rural masses in general & those unprivileged in particular. Govt. of India had setup several Committees (Working Groups) with the task of finding out the practical modalities addressing the said issue in general & the reason for utter failure of Govt., in attracting qualified & trained Doctors for going & settling down in rural areas.
- ii. One of the solutions recommended was to establish an innovative medical institution in rural area, which would set forth the required modalities **for training the Doctors**, who would not only develop an aptitude but also a capacity to understand the deep-rooted socio-economic reasons which were contributory factors for the failure of attaining the promise given under the ‘**Constitution of India**’.
- iii. Govt. of India decided to set up an **unparallel medical training institute in rural area since**, in making the Doctors who would go to rural area and therefore, the Govt. decided to **involve NGO’s in establishing such medical institutes as a JOINT VENTURE** wherein the role of State Government (responsible for regulating education up to graduation) was unavoidable.
- iv. The NGO named as **Kasturba Health Society (hereinafter referred to as “Applicant Society”)** was registered as a Charitable Society at Sevagram, under the Societies



Registration Act, 1860 and also under The Bombay Public Trust Act, 1950, with the sole objective of attending the **health needs of rural India**. On account of its Charitable Objects focusing on Health and Education, the applicant society was registered under Section 12AA of the Income Tax Act, 1961 (IT Act) besides having recognition under The Foreign Contribution Regulation Act 1976. The society since carrying out various Health related research activities, it was recognised as a Research Institute by the Department of Science and Technology, Govt. of India and further Under Section 35(1)(ii) of the IT Act as Research Institute where the qualifies for weighted deduction @ 150% [from 01.04.2017 till 31.03.2021] in the hands of donor while computing his taxable income. The copy of the Society's Memorandum of Association and various **registration certificates** are annexed herewith.

- v. The Applicant *Society* came forward to shoulder the envisaged responsibilities of setting up an **Unparallel Medical Education Institute** in rural area to **implement innovative modalities for teaching and training the medical personnel** who would be enabled to trace the causes generating the unattended health problems of the rural population. Hence a **JOINT PROJECT** known as "**MAHATMA GANDHI INSTITUTE OF MEDICAL SCIENCES**" (Hereinafter referred to as **MGIMS**) was established in 1969 (being the year of **Gandhi Centenary**) with an agreed arrangement for funding the said project by **Govt. of India, Government of Maharashtra and Applicant Society** in the ratio of **50:25:25** respectively. Copy of Government approval is annexed herewith.

vi. In India, medical education at both levels, i.e., before and after graduation is being monitored and regulated by the different Universities under the broader umbrella of Medical Council of India (Here-in-after referred to as "MCI"). These Universities have laid down the detailed academic syllabus for Graduation and Post-Graduation studies through Statutes and every College is obliged to get affiliated with the concerned University in whose jurisdiction the said College falls. Besides academic syllabus, the standard and quality of imparting the medical education is also regulated by Medical Council of India. In absence of recognition by such regulators no medical personnel passing from such Medical College can practice in the field of medicine.

- vii. For grant of recognition, these regulators carry out inspection of the teaching facilities at College, on periodic basis and that too on subject to subject basis. For that matter, regulators have laid down norms specifying the floor area required for in housing teaching assignment, practical training for undertaking the operations, strength of teachers/nursing staff, their required academic qualifications/experience, requirements of teaching aids like equipment, implements, etc. which have to have complied with by every College engaged in imparting Medical Education.



- viii. The Medical College set up by the applicant Society under the title "Mahatma Gandhi Institute of Medical Sciences" (Here-in-after referred to as "MGIMS") has been **First Rural College in India**, which has complied with all the requirements pertaining to the teaching staff, constructed floor area, equipment, implements, assisting staff and all its courses including M.B.B.S. The copies for intake sanction is annexed herewith.
- ix. In addition to that, Nagpur University & Maharashtra Health University of Nasik have prescribed academic syllabus for imparting theoretical & practical medical education in systematic manner. Applicant Society has structured the academics in such a manner, which on the one hand satisfies the technical and academic requirements of regulators and simultaneously the students understand and appreciate the root cause of health related disorders of rural area and poor population on the other hand. MGIMS has been recognised as a National Institute for Medical Education, Training and Research Centre and as a Centre of Excellence, which has established innovative and integrated pattern of ethical medical education purporting an accessible and effective delivery of health care to the under privileged rural community at affordable cost and therefore it is considered, by the Govt., as a role model for rest of the India. MGIMS has been officially rated at 10th College in order of Merit in India & 2nd in field of Research in Maharashtra.

Stipulated modalities of imparting medical education have been classified in basic two categories, i.e., 1) **Non-clinical subjects** & 2) **Clinical subjects**. The Regulators have obliged the College to establish well equipped Laboratories for every subject of non-clinical side, i.e., Anatomy, Biochemistry, Microbiology, Physiology, Pathology, Forensic Medicine, Community Medicine, while on the clinical side for different subjects i.e. Medicine, Psychiatric, Dermatology, Surgery, Orthopaedics, ENT, Obstetrics, Gynaecology, Paediatrics, Neonatology, Ophthalmology, Dentistry, Anaesthesia, Radiotherapy, Physiotherapy and so on.

- xi. Such clinical laboratory must possess the varied **clinical material** (*here-in-after termed as "PATIENTS" at some places*), having different diseases relating to Heart, Lung, Bones, Blood, Nerve, Gastro etc. caused by several reasons including infections through insects, bacterial, viral etc. to be essentially made available to the students and teacher for getting them educated with the wide spectrum having a focus on advanced mechanised diagnosis, management of drugs, rehabilitation but at an affordable cost. These varied essential clinical materials, can be made available only by admitting the persons suffering from these various diseases, in the teaching lab, carryout Investigations, laboratory tests, X-rays, Citi Scan for diagnosing the diseases in more precise way and for that purpose, MGIMS is maintaining and managing 1000 Beds for



imparting the theoretical and practical bedside Medical Education. Such teaching labs accommodating the stipulated teaching beds in which the persons suffering from these various diseases is admitted is known as "Kasturba Hospital". The said teaching lab is an integrated part in imparting systematic medical education like other labs in other branches of education. Thus "Kasturba Hospital" is not an independent establishment in isolation or a Hospital rendering healthcare services only since it is a teaching lab for the students of MGIMS.

b. The Kasturba Health Society has been held a "State"

i. **Governing Council:** Governing Council of MGIMS, as per University Statute comprises of Ten Members and a Chairman. Out of these Ten Members, Five Members (out of which three are Medicos) are nominated by Kasturba Health Society and Five Members are nominated by Central and State Governments. The working including the process of teaching through practical training and research-oriented training on clinical and non-clinical side of MGIMS is regulated by the Governing Council. The project of MGIMS is substantially funded by the Govt. and, therefore, is treated on the line of Govt. College.

ii. **Held as state** - The Judicial Authorities have already held that Applicant Society is a **'State'** under Article-12 of Constitution of India.

a. The High Court of Judicature at Bombay, Nagpur Bench, Nagpur in the case of *Ajay Ganiar & Ors. V/s Dean, Mahatma Gandhi Institute of Medical Sciences, Sevagram & Ors.*, 1985 Maharashtra Law Journal, P-597 as well as in the case of *B.M. Vidhwans V/s Nagpur University (S.C.A. No.1753 of 1977 decided on 16/18th July, 1980)* .

The Hon'ble lordship observed (Para -11) that – *"Thus, we see no difficulty whatsoever in holding that Respondent no.12, i.e., (MGIMS) is a "State" within the meaning of Art.12."*

Further vide para 12 of the said Judgment, their lordship observed that *"One of the important tests to be applied is a functional test. Imparting higher medical education is the function of the Institute. This education is essentially concerned with national health. Articles 41 and 47 in Chapter IV deal with education and public health. They embody some of our national goals for fulfilling which public funds are being utilised by the Government. This education is regulated by several enactments with the sole object of achieving best standards. Those obtaining degree will be entitled to deal with human life at its crucial stage. Thus, the Institute in one sense is performing a statutory duty and is therefore also an instrumentally of "State".*

b. Further in the case of *Kuldeep Sukhdeve* in Writ Petition No.2951 of 1992, their Lordship of Nagpur Bench of Bombay High Court held that – *"The Mahatma Gandhi*

Institute of Medical Sciences, Sevagram has been held to be a public authority and/or an instrumentality of the State within the meaning of Article-12 of the Constitution of India vide Judgment of the Hon'ble High Court of Judicature at Bombay, Nagpur Bench in the case of Ajay Gambhir (cited above)".

Thus, the status of Kasturba Health Society as held by Judicial Forum is a "State".

c. No activity being undertaken involving any profit motive neither carries on any business.

- i. Applicant Society is engaged in imparting the systematic education and training as per the syllabus stipulated by concern competent Authorities where MGIMS is the major activity of APPLICANT SOCIETY without having any profit motive or pre-designed factor of monetary gain and as such cannot be assumed to have engaged in carrying on any business. The scale of expenditure for running of MGIMS that is incurred for imparting the Education at affordable cost, runs over the Fees and charges recovered from Students and Patients. Substantial portion thereof is borne by Central and State Govt. This contention will be evident from the tabulated figures as under of last three years –

Particulars	FY 2015-16	FY 2016-17	FY 2017-18
Direct expenditure of Running of MGIMS	116,32,02,834	119,00,32,144	132,20,06,354
Expenses for Research, Management and Coordination of MGIMS	43,15,723	66,31,443	66,82,058
Total	116,75,18,557	119,66,63,587	132,86,88,412
Receipt from Students and Patients	28,06,28,730	33,20,97,585	32,67,76,164
Shortfall	88,68,89,827	86,45,66,002	100,19,12,248
Borne by Government			
By Central Government	56,76,60,334	57,92,06,697	64,87,17,802
By State Government	24,41,61,000	28,45,06,000	32,43,58,900
Total Government Fund	81,18,21,334	86,37,12,697	97,30,76,702

- ii. It is a matter of record that most of the items being purchased by Applicant Society are dispensed off without any profit motive which is in fact, incidental to achieving its main objective of Medical Education and particularly for retaining the clinical material, which is necessary for imparting training & medical education to students.
- iii. Most of the clinical material i.e. Patients, come from the Rural & Hilly areas having Income below poverty line. Hence, when they are asked to square up accumulated Recoupment Charges for carrying out investigation, nursing, medical treatment, surgical procedures Cost of Drugs etc., most of them express their inability to pay the same in

view financial difficulties. It is also experienced that the person who is on the verge of cure use to walk out from hospital without getting an official discharge and thus there was no possibility of recovery of recoupment charges. Hence the management decided to realise the Hospital charges, *which otherwise do not exceed 15% to 20% prevalent at Charitable and other Hospitals*, through a peculiar mechanism to collect Investigation Charges at the point of collecting report, for Surgical implants at the point of collecting such material, for medicines at the point such medicine is stored and delivered and also at other convenient points. The quantum of recovery of charges from patients and students are meagre in comparison with the expenses incurred by the MGIMS. There is no paper prescription handed over to patients either for collecting surgical material, test reports or medicine. Only registered patients, who are examined by the Students & Teachers in the course of their practical training process, are identified by Unique Registration Number and the requirement of the material inputs are exhibited electronically at different designated collecting points. No person from outside can collect any medicine or any other item from such storage. Thus, whatever amount is collected at different collection centres within the college premises is nothing but recovery of Hospital Charges in instalments against issuance of receipts which does not amount to a realisation of sale proceeds for goods or services. Needless to mention that this process is modality to recovery the Hospital Charges at different points, different times for different heads for different inputs necessitated for investigation, diagnosis, medical treatments, surgical or procedures and that too keeping in mind the sole purpose of convenience of Patient.


IV. **In order to maintain the teaching lab -The following activities are carried out are as under:**

- a. The clinical materials (patients) are examined and the reasons, causes, symptoms and history of the sufferings is jotted down and making comparative thereof is done in OPD which is further supported by the pathological or microbiological or radiology investigations, and if necessary further investigation on highly technical and advanced equipment such as CT-Scan, MRI, Colour Doppler, Angiography, Gastro scope, Sonography and so on. If felt necessary Medicine is administered and after observing for some time they are allowed to go home.
- b. On having clinically diagnosed if needed the detailed plan of administering the medicines is carried out by admitting patients where the surgical procedures are carried out to cure them. For this purpose, patients are needed to be admitted and the inputs like injections, medicines, drugs, syrups, ointment, bandages, plasters, implants, vaccines are can be provided. **The Authorities like MCI, University and Government have permitted the medical colleges to recoup the input cost either by way of item wise**



charges or under the head 'Hospital charges' which is nothing but a receipt from Clinical Laboratory which is an essential process of imparting practical Education. The copy of letter is annexed herewith.

- c. In the context of intake capacity permitted for graduate courses and that for post graduate courses and as per MCI norms, Applicant Society is required to maintain 1000 Beds for providing the clinical material to more than 700 students pursuing medical education. It is imperative that the clinical material should be of varied types, kinds, covering wider spectrum like cancer, H₁N₁, Malaria, Filariasis, typhoid, neurological disorder, psychological disorder, gastro, tuberculosis, dermatological diseases, venereological, ophthalmological, toxicological, obstetrical and gynaecological problems multiple and other disorder and so on for providing an essential exposure of different diseases, process of diagnosis, manner of treatment, scale of doses, etc to enable the students to manage such diseases in their Medical profession. The copy of letter is annexed herewith.
- d. To comply with such mandatory requirements of medical education, the Society had to attract the patients by providing them friendly atmosphere having well equipped teaching labs with advanced technology equipment, implements, apparatus & qualified experts as well as trained medical personnel and that too at **affordable cost to the rural population**. Hence Applicant Society have floated several schemes including Unparallel Health Insurance Scheme prescribing a nominal cost of Re.1/- per year per resident of the concerned village and for urban population Rs.500/- for entire year for a family of five members. As a result, presently more than 10Lakh individuals are taking the benefit of subsidised cost of medical treatment.



In order to retain the inflow of sufficient clinical material for the purpose of medical education, the Society was already **charging concessional rates for investigations, treatment and cost of medicines [Here-in-after referred as recoupment charges]**. Further the teachers (Doctors) were empowered to waive partly or fully such recoupment charges towards consumed medicines and other items. Meanwhile, the Charity Commissioner by enforcing the provisions of Sec.41D of B.P.T. Act, 1950 made mandatory to administer the medical treatment free of cost to 10% of the intake capacity. Subsequently State & Central Govt. have stipulated to provide medical treatment at concessional rate to the patients falling within "BPL" category.

f. RESEARCH WORK PURSUED

Beside practical work on field the teachers and students are propagating their findings through Seminars, Workshops etc. & thus many countries having taken cognizance of the said research invited them in various workshops, seminars and

conferences for sharing their knowledge with others. Further the findings of research in the field of medicines is recognised by domestic as well as international publications by providing suitable space for such publications. Such a list being too long is annexed herewith. As already stated, having regard to the Research activity The Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, Government of India has notified U/s. 35(1)(ii) of IT Act.

g. **The support activities which are essential in order to achieve the main object.**

The main activity of the applicant society is Medical Education & for that purpose large section of society such as students, parents, patients, relative of patients, staff members, expert faculties, and others remain within the premises. They need various facilities like Banking, Parking, Stay Arrangement, Food items, Photocopy etc. for which the required space is being made available by the applicant society **at nominal charges which are utilised as funding to the main activity.**

While making these facilities available, incidentally there is a realisation from disposal of waste and unusable items, equipment etc. which is even not 0.001% of the total receipt of the institution (*i.e. Government grant, Interest on Investment, Fees from students and nominal charges from patients constituting the income of the institution,*) which in itself is little lesser than the expenditure incurred. The disposal of waste and unusable items is essential on account of constraint of space for storage and therefore there is no intention to get income from such disposal.

h. **Necessity of Registration requirement under the GST Act 2017.**

The applicant society, since solely engaged in education, was not obliged to get registered under the erstwhile The Bombay Sales Act, 1959, Service Tax Act, and also under the Maharashtra Value Added Tax Act, 2002. There was specific exclusion under Section 2(8) of the MVAT Act, 2002 in the definition of "dealer".

- ii. With effect from 1.7.2017, the GST Act was brought into force in a hurried manner due to which there was no clarity about its applicability to the applicant institution. An atmosphere got created whereby the transporters felt the need to ensure that they carry the Goods with proper documentation including GST registration of consigner and consignee both, in order to continue uninterrupted movement of Goods. Further the suppliers, Vendors and Service Providers from all the corners were pressurising to provide them the GST Registration Number of the Applicant Institution. In this scenario the society without having the GST registration No. was facing the difficulties and in order to overcome these issues, has applied for voluntary registration and as a result got



registered with GSTN having registration No. 27AAATK2046GIZV with effect from 21st July 2017. The copy of registration certificate and application is annexed herewith.

- iii. Though the applicant society got registered voluntarily under GST for the reasons mentioned above, it has not filed any returns since none of the activity was in the nature of “business” so as to fall within the meaning of “supply” as provided in section 2(87) of the GST Act and hence it is believed in bona fide that it is not obliged to comply with the provisions of GST Act.
- iv. However the jurisdictional GST authorities have issued one after another notices to the applicant society for adhering to the compliance with an obligation of filing of returns & therefore the applicant institution enquired with other Institutions, those who are having engaged in similar activity, where it is learnt that none of them is registered under GST act & further learnt that those who have attempted register, applied for the cancellation of registration which is duly cancelled by the jurisdictional GST authorities after considering their nature of activity. The copy of notices is annexed herewith.
- v. Thereafter the applicant institution approached the GST consultant who opined that there is a possibility that prima facie the activity of the Institution is likely to be considered under the category of Services provided by the “Educational Institution” which is exempt from levy of tax but further advised to thrash out the issue applicability of GST law itself to the Institution in legal frame work & hence this application is being submitted for the consideration of the **Honourable Bench** of Maharashtra Authority of Advance Ruling.

3a. Statement containing Applicant's interpretation of law in respect of the aforesaid questions

Whether the applicant, a Charitable Society having the main object and factually engaged in imparting Medical Education, *satisfying all the required criteria of “Educational Institution”*, can be said to be engaged in the business so as to cast upon it an obligation to comply with the provisions of Central Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017.

In support of Applicants it is submitted as under.

1.01. **Background of the levy of Indirect Tax on the activities of Charitable Institution.**

I. Under the Sales Tax Regime.

- a. In majority of cases it was decided that, liability to pay Sales Tax under Sec. 3 of the Bombay Sales Tax Act, 1959 was only on “Dealers” & since, definition of “Dealer” as per Section 2(11) of said Act, clearly provided that in order to hold a person to be a dealer”, he must carry on **business** as defined in Section 2(5A) of the said Act, in respect of its activities, including transactions incidental or ancillary.

- b. Having regard to the definition of "business" under Section 2(5-A) of the BST Act, 1959, it was further decided by the Judicial Authorities that if the main activity is not business, then any transaction incidental or ancillary thereto would not amount to business **unless an independent intention to carry on business in the incidental or ancillary activity is established.**
- c. These disputes were also settled by the courts on factual position having similar background **with no contrary view in** following cases:-
- **Apex court in case of Sai Publication Fund 4 SCC 7 (SC)** - decided that in respect of sale of books, booklets, pamphlets, photos, stickers and other publications containing message of Saibaba and the turnover of such publication cannot be assessed to sales tax under the BST Act, on the facts & in the circumstances of the present case irrespective of the profit motive, it could not be said that the Trust either was a "dealer" or was carrying on trade, commerce etc. **The Trust is not carrying on trade, commerce etc.,** in the sense of occupation to be a "dealer" as its main object is to spread message of Saibaba of Shiridi.
 - In case of **Indian Institute of Technology v. State of U.P. [(1976) 38 STC 428 – Allahabad HC** - observed that the statutory obligation of maintenance of the hostel which involved supply and sale of food was an integral part of the objects of the Institute. Nor could the running of the hostel be treated as the principal activity of the Institute. **The Institute could not be held to be doing business.**
 - In **Dy. Commissioner (C.T.) v. South India Textile Research Assn. [(1978) 41 STC 197- Madras High Court** -observed that in the case of a research organization, which was purchasing cotton and selling the cotton yarn/cotton waste resulting from the research activities, it was held that the Institute was solely and exclusively constituted for the purposes of research and **was not carrying on "business"** and these sales and purchases above-mentioned could not be subjected to sales tax.
 - In **State of T.N. v. Cement Research Institute of India [(1992) 86 STC 124 – Madras High Court** held that the Institute was an organisation the objects of which were to promote research and other scientific work that the laboratories and workshops were maintained by the organization for conducting experiments and that though the cement manufactured as a result of research was sold, **it could not be considered to be a trading activity** within Section 2(d) of the Tamil Nadu General Sales Tax Act, 1959.
 - In **Tirumala Tirupati Devasthanam v. State of Madras [(1972) 29 STC 266 – Madras High Court** observed that the disputes arose with regard to the sales of Silverware etc. which are customarily deposited in the hundis by devotees and thus it



was held that the Devasthanam's **main activities were religious in nature** and these sales were not liable to tax.

II. Under the VAT Regime.

Over a period of time the charitable trust have started various activities viz. manufacturing, buying and selling of goods etc. which were considered in the nature of business with or without profit motive and therefore in order to bring such activities within the preview of Sales Tax the MVAT Act w.e.f. 1.4.2005 specifically included the Trusts or Society within its ambit by enlarging the definition of **"Deemed Dealer"** and as a result attempted to levy the tax on such activities. In spite of this fact while determining the issue whether the activity of particular Trust would fall within the scope of business, the matter was decided by the Hon'ble Commissioner of Sales Tax in specific cases having regard to the nature of activities **in favour of the Trust** which are discussed in later part of the submission.

III. Under the Service Tax Regime. [Operated simultaneously with Sales Tax and VAT Regime for levy of Tax on Services]

The Finance Act 1994, also attempted to cover various services provided by the Charitable Institution those having commercial sense within its ambit and levied the Service Tax on the services rendered by them primarily **on the value of consideration**. However, while levying tax the Services beyond the scope of Business or commercial nature are excluded and even those having flavour of commercial activities are also excluded to the larger extent by providing specific exemptions like those having registration U/S 12AA of the Income tax Act 1961.

IV. Under the GST Regime.

- a. Even the GST Act is also not making any departure from the basic concept where the activity of Charitable Institution having the flavour of business is proposed to be taxed which is evident from the scope of Section 2(17) of The CGST Act defining **"Business"** that gives the context to the above-mentioned term just like in earlier Tax laws, where **the effective tax to be paid is always on business transaction only**.
- b. A perusal of the definition of **"outward supply"** under MGST/CGST further clarifies this proposition where, as per Section 2(83) **"outward supply"- in relation to a taxable person, means supply of goods or services or both, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal or any other mode, made or agreed to be made by such person in the course or furtherance of business.**
- c. It is clear, that only commercial transactions are taxable, if any activity whether made or agreed to be made is neither for continuity of business nor for advancing or furtherance of the same, such a transaction, will not be a supply at all.



From the above it would be clear that **all the taxing statutes proposed** to cover the activities of Charitable Institution for the purpose of Levy of Tax where the nature of activity is found to be **carrying on business** and excluded all those activities which are purely in the nature of Charity. Even the scope of GST Act confirms to the said proposition where the services rendered in the Course or in furtherance of business are brought in its ambit which would be clear from the following submission.

1.02. **Analysis of definitions and charging provisions.**

- I. Section 22 obliging for Registration, Schedules prescribing the rates of tax and other charging provisions are centred around the word **'Supply'** therefore the meaning of supply as defined in section 7(1) will have to be looked into which inter alia provides/reads as under.

Section 7 (1) -for the purposes of this Act, the expression **"supply" includes**

- a. *all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.*
- b. *Import of services-----*
- c. *The Activities -----*
- d. *The Activities -----*

- II. From a plain reading of **Clause (a) of Section 7(1)**, it is clear that for a transaction to qualify as 'supply', it is essential that the same should **'in the course or furtherance of business'**. As a result, the supplies which are not in the course of business (or in furtherance of business) will not qualify as 'supply' for the levy of tax.

In this reference the meaning of word **"Business"** & further meaning of phrase **in the course of business and in furtherance of business** is needed to be looked into.

- i. Section 2(17) of the CGST Act, 2017 Defines **"business"** as under.

"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. An activity or transaction in connection with or incidental or ancillary in sub-clause (a);
- c. any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
- d. Supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
- e. Provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
- f. Admission, for a consideration, of persons to any premises;
- g. Services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- h. Services provided by a race club by way of totalisator or a licence to book maker in such club; and
- i. An activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;



From the above it would be clear as to what would mean **business** and therefore the same is needed to be confined as per the legal terminology – “**Ejusdem Generis**”.

Ejusdem Generis” would mean that where a law lists specific classes of persons or things and then refers to them in general, the general statements only apply to the same kind of persons or things specifically listed.

Example: if a law refers to automobiles, trucks, tractors, motorcycles and other motor-powered vehicles, “vehicles” would not include Airplanes, since the list was of land-based transportation. There can be many such examples.

III. Significance of the definition of ‘business’

It is by now an accepted position that the definition of ‘business’ under Section 2(17) is very wide and inclusive in nature and therefore, any supply which might be incidental or ancillary to the main activity would also become taxable **if the main activity in question is in furtherance of business**. There are several activities which have a flavour of a supply but may not necessarily become taxable in isolation and therefore what is most important is to determine whether the main activity can be classified as ‘business’ or not. It, therefore, becomes very important to not hastily take shelter of the term ‘in furtherance of’ while classifying such activities as “taxable”.

Case of State of Bombay vs. Ahmadabad Education Society (1956) 7 STC 497 (BOM) was held by the Ld. Chief Justice of India that – “if it was the intention of the legislature to tax every sale or purchase irrespective of the object of the activities out of which the transactions arose, then it was unnecessary to state that the person must “carry on the business” of selling, buying, etc.”

IV. Meaning of *in furtherance of his business*-Meaning of *in the course business*-However on analysing the scope of supply under Section 7 of the CGST Act does one truly encounter the character of the phrase “**in the course of or furtherance of business**”. *Still the same is needed to be understood in common parlance.*

The phrase ‘**In the course of or furtherance of**’ is used in Section 2(17), in the context of defining ‘Business’, section 2(83) defining Outward Supply and section 17 of the CGST Act defining the scope of supply. This definition gives context to the above-mentioned term just like in any value-added taxation system, even in the case of GST Law, the effective tax to be paid is always on business transaction only. Therefore, it is very clear, that only commercial transactions are taxable. If any activity whether made or agreed to be made is neither for continuity of business nor for advancing/furtherance of the same, such a transaction, will not be a supply at all. Further Section 16(1) in the context of eligibility of Input Tax credit again use the said the term which essentially

signifies continuity in relation to a specified activity, whereas “in furtherance of” means anything done which assists or advances a particular act. Therefore, in simple words, the phrase “in the course of or furtherance of business” means something which is done during the continuance or for providing further assistance in advancing the overall business. The intention of the legislature is very clear that tax is payable only on any business transaction to facilitate seamless continuity.

1.03. **Departmental Clarification with reference to Charitable Institutions.**

I. Press Release relating to RCM.

Since the advent of GST, upon analysing the scope of supply under Section 7 of the CGST Act there were several diverse views which were expressed viz. whether any individual selling or purchasing any articles like jewellery, cars, flats etc., in their personal capacity, would be liable to be registered and pay GST under the law. This was clarified by the Government vide press release dated 13th July 2017, which dealt with the subject of “tax under reverse charge on purchase of gold ornaments by jewellers”, stated in final para as under.

“ Even though the sale of old gold by an individual is for a consideration, it cannot be said to be in the course or furtherance of his business (as selling old gold jewellery is not the business of the said individual), and hence does not qualify to be a supply per se. Accordingly, the sale of old jewellery by an individual to a jeweller will not attract the provisions of section 9(4) and jeweller will not be liable to pay tax under reverse charge mechanism on such purchases. However, if any unregistered supplier of gold ornaments sells it to registered supplier, the tax under RCM will apply.”

II. The material Prepared and published by the National Academy of Customs, Indirect Taxes & Narcotics

Further the material prepared published by the National Academy of Customs, Indirect Taxes & Narcotics on **GST on Charitable and Religious Trust** also indicates the same intention wherein it is provided as under;

The term “religious place” as per the clause (zy) of the said notification means “a place which is primarily meant for conduct of prayers or worship pertaining to a religion, meditation, or spirituality”. Dictionary meaning of “precincts” is an area within the walls or perceived boundaries of a particular building or place, an enclosed or clearly defined area of ground around a church, temple, college, etc. This implies that if immovable properties like marriage hall, convention hall, rest house for pilgrims, shops situated within the premises of a religious place are rented out, income from letting out of such property is wholly exempt from GST.



But if such properties are not situated in the precincts of a religious place meaning thereby not within walls or boundary walls of the religious place, income from such letting out will lose this exemption and income from it will be liable to GST.

Income from a religious ceremony organized by a charitable trust is exempt as per the above notification. So, the income from Navratri functions, other religious functions, and religious poojas conducted on special occasions like religious festivals by persons so authorized for this purpose by the charitable or religious trust are exempt from GST.

But a careful perusal of this exemption shows that all income from such a religious ceremony is not exempt. **Therefore, the nature of income is an essential factor for ascertaining whether it will be taxable or exempt.** If income loses its religious nature, it is definitely chargeable to GST. For example, if with regard to Ganesh utsav or other religious functions, charitable Institution rent out their space to agencies for advertisement hoardings, income, from such advertisement is chargeable to GST, as this will be considered as income from the advertisement services. Further, if donation for religious ceremony is received with specific instructions to advertise the name of a donor, such donation income will be subject to GST. But if donation for religious ceremony is received without such instructions, it may not be subject to GST.

From the above clarification by the Department which is in the line of direction of Apex Court and various other Judicial Authorities, it is crystal clear that in order to bring any activity of charitable institution within the scope of tax it is necessary to look at what is the intention of earning income vis-à-vis the nature of income.

Undisputed status of applicant society as EDUCATIONAL INSTITUTION.

The earlier law i.e. the BST Act and MVAT Act 2002 has not defined the term “**educational institution**” therefore the matter was decided by the Hon’ble Commissioner of Sales Tax Under Section 56 of the MVAT Act, 2002-vide No.**DDQ-10/05/Adm-5/116/B-1 Mumbai, dt. 06/03/2006 in case of M/s. Bombay Natural History Society, Mumbai** in which certain principles have been laid down in order to decide the status as educational institution, where it is held that:

Commonly speaking, the educational institutions that would be excluded from the purview of the definition of ‘dealer’ are those institutions which satisfy all the following five criteria simultaneously, namely; -

- Is recognized as an educational institution by a University or the UGC, or as the case may be, by a technical or educational board.
- Has prescribed courses or syllabus for the students.
- Has a teaching staff which is on the payroll of the college or the institution.
- Issues certificates to its students.
- Conducts tests/exams as per prescribed rules.



This criterion is further affirmed in following DDQ

- DDQ-10/2005/Adm-5/89/B-2 Mumbai, dt.13/03/2006 in case of The NAB Workshop For the blind' Mumbai
 - DDQ-11-03/Adm-5/18/B-3 dt 14/9/06), North Point Research and Training Institute, Mumbai
 - DDQ-11/2008/Adm-3/34/B-dt.18.9.08 Vipassana Research Institute, Mumbai
- i. **However, Under the GST Act there is further clarity on the term Educational Institution in terms of Notification No 12/2017 dated 28.06.2017 defined "educational institution" in clause 2(y) means an institution providing services by way of, -**
- pre-school education and education up to higher secondary school or equivalent;
 - education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;
 - education as a part of an approved vocational education course;

The Applicant institution since comply with the above criterion and hence it enjoys Undisputed status as "educational institution" and thus qualify for remaining out of the scope of the provisions of GST Law.

- 1.05. **Applicant institution's factual status in the context of GST Act, judicial pronouncement, determination of disputed questions under earlier laws, Material published by the GST Council/Others and further to the matter decided in advance ruling under the present GST Law so far.**

The applicant institution is aware of the verdict of judicial pronouncement, determination of disputed questions under earlier laws and matter decided in advance ruling under the present GST Law where it is held that though the institutions is charitable one but having regard to the nature of activity it is decided that those activities amounts to carrying on business & as such are liable to be registered in the earlier and present law.

However on distinguishing the factual position of Applicant Institution with those one where the matter is decided against those Institution, it would be imperative to note that **the status and activity of the Applicant Institution is altogether different and as such cannot be equated with those ratios** and as such needed to looked at differently as opined by the Supreme Court in case of **Commissioner of Sales Tax vs Sai Publication Fund 4 SCC 7 (SC)** as under -

We must add here that whether a particular person is a "dealer" & whether he carries on "business", are the matters to be decided on facts and circumstances of each case.

In the light of the said direction the status of Applicant Institution is needed to be distinguished with those cases in which the activities for charitable purpose though were



not amounting to Carrying on Business still those Institutions are held as "Deemed Dealer" in view of the inclusive definition of definition of "Dealer".

1.06 The Ancillary or support activities which are essential in order to achieve the main object of the institution cannot be tagged as "business".

I. Bona fide belief.

- i. In order to carry out the main activity of medical education, large section of society such as students, parents, patients, relative of patients, staff members, expert faculties, and many others remains within the premises and therefore they need various facilities like Banking, Parking, stay arrangement, Refreshment etc. for which the required space is made available by the applicant society at nominal charges. Further there is a realisation from disposal of waste and unusable items, equipment etc. which is even not 0.001% of the total receipt of the institution.
- j. Applicant institution has bona fide belief that getting such nominal receipt does not amount to business in itself which is a main ingredient of bringing the activity within the scope of GST. **Further since the main activity is not business, therefore the ancillary or support activity cannot be considered as business** and for that matter the applicant has placed reliance on the following judicial pronouncements.

II. Judicial pronouncements in support of Applicants Submission.

Hon'ble Supreme Court in the case of Commissioner of Sales Tax Vs. Sai Publication Fund (2002) 4 SCC 7 (SC), where in the Supreme Court categorically held that where the main activity is not business, then any incidental or ancillary transaction, unless established by the revenue department to be an independent business transaction, will also be considered as charitable only & not business. The Supreme Court held that where the main & dominant activity of the assessee Society in that case was to spread message of Sai Baba, then bringing out publications & sale thereof by the assessee Society to its devotees at cost price did not amount to business.

- ii. **Hon'ble Supreme Court in the case of CIT Vs. Gujarat Maritime Board (2007) 14 SCC 704 (SC)**, where in the Hon'ble Supreme Court held that if the primary or predominant object of the Society is charitable, any other object which might not be charitable but which is incidental or ancillary to the dominant object will also be considered as charitable.
- iii. **Bombay High Court in case of Commissioner of Sales Tax vs. Cutchi Dasha Oswal Mahajan Udyog Committee (36 STC 1) (Bom)**. In this case also, the Charitable Society was employing destitute women for preparing the eatables & such eatables were sold at market price. Hon. High Court has held that such activity' is for




carrying out of main object of helping poor & needy women therefore even if sale is at profit & at normal rate still it will be incidental activity & not business.

- iv. **Maharashtra State Sales Tax Tribunal in case of KEM Hospital Society V/s State of Maharashtra (1995) 11 MTJ 45 (MSTT)** The society running a Medical Store/Drug Store in the hospital run by it was held not to be dealer as its activity was incidental to its main object which are neither commercial nor trade in nature.
- v. **Maharashtra State Sales Tax Tribunal in case of Bombay Young Men's Christian Association V/s the State of Maharashtra 1998, 18 MTJ 437** Public Trust constructing international home providing Boarding and Lodging facility to its members carrying of activities for humanitarian, philanthropic and educational object is not a dealer as the activity incidental to main and dominant object of development of human personality which is not a business.

III. Orders Determining Disputed Questions by Hon'ble Commissioner of Sales Tax in support of contention of the Applicant Society.

On the lines of above judicial pronouncements the Hon'ble Commissioner of Sales Tax Sales Tax [CST] while determining similar disputed questions held the same proposition in following matters.



	DDQ No. & Date	In the Case of	Held
1	No.DDQ-11-2004/ Adm-5/78/B-8 Dt. 31/03/2006	Gram Mangal, Sadhana Village, Pune, Yuvak Pratishthan, Mumbai	While deciding the bunch of DDQ's on . 31/03/2006 the CST has accepted the ratio and observation from M/s. Sai Publication and held that since the main activity is not business therefore any transaction incidental or ancillary would not normally amount to business unless an independent intention to carry on business in the incidental or ancillary activity is established. Thus, the applicant cannot be held to be a dealer for the purposes of the Bombay Sales Tax Act, 1959.
2	Determination Order dated 2-12-1994 in the case of	M/s National Safety Council:	Activity of selling educational and promotional literature and materials like safety calendars, pamphlets, posters etc. is ancillary to the main objective of educational campaigns. It is held that as per Exception-II to section 2(11) of the Bombay Sales Tax Act, 1959, he cannot be treated as a dealer.
3	NO.DDQ-11/2008/ Adm-3/ 34/ B- 4 Mumbai, dt.18.9.08	Vipassana Research Institute, Mumbai-	Following Supreme Court judgement in the case of M/s Sai Publication Fund (126 STC288) it is held that in the present case, the manufacturing, buying or selling of the books and the CDs are integrally connected with the objects of the Trust. The secondary activities were integrally connected with the objects of the Trusts. The applicant is not a dealer for the purposes of the MVAT Act

1.07. The Applicant Institution cannot be held as having carrying on any Business.

From the above and having regard to the activity of Applicant Institution it would be clear that:

- i. The sole objective of the applicant being attending the health need of rural India through medical education and that too with the joint participation of Central

Government (50%) and State Government (25%) the applicant cannot be said to be carrying out “**business**” as defined in Section 2(17) of the CGST Act, 2017.

- ii. Further as discussed above if the main activity is determined as **not business**, in such a case, any other activity whether incidental or ancillary cannot be held to be a **supply exigible to tax since such activity is neither** in the course of nor in furtherance of business and rather it is a non-business activity undertaken for carrying out the main object of the institution and thus the income received in form of realisation from disposal of waste and unusable items, equipment, rental etc. [which is used for main object only which is charitable and religious purpose] cannot be considered separately and as such shall go with the income which does not fall within the meaning of business.

In view of above factual and legally settled position by the judicial authorities the activity of the institution cannot be considered as business and as a result cannot be obliged to comply with the provisions of GST Act, Rules and Notifications.

- 1.08. **Whether the applicant, a Charitable Society having the main object and factually engaged in imparting Medical Education, satisfying all the criteria of “Educational Institution” is liable for registration under the provisions of Section 22 of the CGST, 2017 and MGST Act, 2017 or it can remain outside the preview of registration in view of the provisions of Section 23 of the said Act as there is no Taxable supply.**

In this context the legal provisions are as under.

2.01 Obligation for Registration as per Section 22 of GST Act

Section 22(1) of the CGST Act, 2017, provides for registration under the CGST Act, 2017 . The text of provision is reproduced below for ready reference:

22. (1) Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees:

Provided that where such person makes taxable supplies of goods or services or both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees.

- I. Applicant institution is not covered by the above provision in view of following facts.
 - a. At the outset it is submitted that the applicant institution is not carrying on any activity in the nature of business as elaborated here-in-above and therefore there is no obligation to get registered u/s 22(1) of the CGST Act, 2017. In alternative in the event by any stretch of imagination it is treated as business and thus covered as supply then still there is an exemption in relation to services carried out by Society as



“Educational Activity” where such exemption is meant for them who are in business and the law wants to exclude the given services. However, in any case, providing exemptions cannot go beyond the definition clause of ‘business’. Unless the entity falls within the meaning of ‘business’ it cannot be subjected to tax based on any other criteria and therefore exemption would be the last resort.

- b. In alternative the applicant submits that, even by any stretch of imagination if it is treated that the activity of applicant institution amount to providing services **falling within the scope of Supply** then the receipt from students is in the course of imparting medical education which according to scope of GST Act falls within the category of Service provided by an “Educational Institution” to its students, faculty, staff in terms of Notfn 12/2017 C.T.–dt. 28/6/2017 at Sr. No 66 which is exempt supply.
- c. Further the nominal charges received from the patients (*who is an essential clinical material for education laboratory*) would fall within the category of “educational services: and even after further stretching it would fall within the meaning of **Health care service** by a clinical establishment in terms of Notification 12/2017 Central Tax – dt. 28/6/2017 at Sr. No 74 which is again an exempt supply.
- d. In the light of Supreme Court judgement in the case of Commissioner of Sales Tax Vs. Sai Publication Fund (2002) 4 SCC 7 (SC) CIT Vs. Gujarat Maritime Board (2007) 14 SCC 704 (SC), Commissioner of Sales Tax vs. Cutchi Dasha Oswal Mahajan Udyog Committee (36 STC 1) (Bom). Maharashtra State Sales Tax Tribunal in case of KEM Hospital Society V/s State of Maharashtra and also in Bombay Young Men’s Christian Association V/s the State of Maharashtra cited supra, **the nominal receipts on account of Ancillary or support activities which are essential in order to achieve the main object would fall within the category of Educational Services and/or Health Care Services.** Further in terms of Notification 12/2017 Central Tax – dt. 28/6/2017 as per Sr. No. 1 **certain specified Services by an entity registered under section 12 AA** of the Income Tax Act by way of Charitable Activities amounts to exempt supply which inter alia includes the nominal amount that is being received on account of ancillary services. Applicant society since is **registered under section 12 AA** of the IT Act & hence is eligible for claiming such receipt as exempt supply.
- e. Even if it is treated that the activity of applicant institution amount to supply still none of the supply amounts to “taxable supplies” and thus there is no obligation for registration under the provisions of Section 22(1) of the CGST Act, 2017 in view of exception provided by section 23 of the CGST Act, 2017 which provides as under –



II. Section 23 refers about the persons not liable for registration

- i. Section 23 provides that the following persons **shall not be liable to registration**, namely:-
 - a. *Any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from the tax under this Act or under the Integrated Goods and Services Tax Act;*
 - b. *An agriculturist, to the extent of supply of produce out of cultivation of land*
- ii. In absence of any taxable service the applicant institution is not obliged to obtain registration u/s 22. The department has already made it clear in terms of notification issued that in case there is no taxable supply event then the person is not required to obtain the registration and those who on account of migration obtained GST registration can opt for cancellation thereof.

III. Compulsory registration in certain cases –

Section 24 of CGST Act 2007 provides for Compulsory registration in certain cases as under

Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act,

- 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 deduct tax under section 51, whether or not separately registered under this Act;*
- v. *such other person or class of persons as may be notified by the Government on the Recommendations of the Council*

Since the applicant institution does not fall within any of the above category and hence not liable to obtain registration u/s 24 of the CGST act.

From the above it would be clear that the applicant institution is neither liable for registration u/s 22 (1) nor under the compulsory registration provision u/s 24 and thus in terms of exception provided by Section 23 and further clarification by the GST council the applicant institution is not liable for registration u/s 22 or u/s 24 of the CGST act and hence the Hon'ble Bench is requested to decide the questions accordingly in favour of the applicant institution not holding it as liable for registration under the GST Act.

2. **Submission In a situation if above questions are answered against contention of the applicant institution then following further questions are being raised for the kind consideration by the Honourable bench**

- i. Whether the fees & other charges collected from students & nominal charges received from patients (*who is an essential clinical materials for education laboratory*) would constitute as “outward supply” as defined in Section 2(83) of the CGST Act, 2017 and MGST Act, 2017 and if yes then whether it will fall in classification entry at Sr. no 66 or the portion of nominal amount received from patients (*who is an essential clinical materials for education laboratory*) at Sr. No 74 in terms of Notfn 12/2017 C.T.– dt. 28/6/2017.

In this context the legal provisions are as under.

- a. In exercise of the powers conferred by sub-section (1) of section 11 of the CGST Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, in terms of Notification 12/2017 Central Tax dt. 28/6/2017 exempted certain supply of services which inter alia covers the activity of the institution as under;

- > At item no. 66 under the Heading 9992 - Services provided - (a) by an educational institution to its students, faculty and staff; where the “educational institution” means an institution providing services by way of, -
 - pre-school education and education up to higher secondary school or equivalent;
 - education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;
 - education as a part of an approved vocational education course;

Since the applicant institution comply with the conditions prescribed above and hence its activity of education falls within the scope of above exempt services and accordingly charges collected from students for imparting medical education to them would fall under this exempt category of services.

- > Further The said notification at item no. 74 under the Heading 9993 provided exemption to the supply of Services by way of **Health Care Services** by a clinical establishment, an authorised medical practitioner or para-medics;
- It is provided in clause 2 definition at item no. (2g) which defines “**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;

- Further clause 2 of definition at item no. (s) defines “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;
- b. As stated above in facts that in order to provide medical education it needs clinical laboratory with varied clinical material covering the different diseases which had to have essentially made available to the students and teacher for getting them educated with the wide spectrum having a focus on advanced mechanised diagnosis, management of drugs, and for that purpose the MCI has prescribed to maintain 750 Beds with reference to the academic courses being taught at MGIMS. Such teaching labs accommodating the stipulated teaching beds is known as “Kasturba Hospital” which if at all treated as rendering services still it falls within the meaning of clinical establishment as defined in clause 2 (s) and the nominal charges received from the patients (*who is an essential clinical materials for education laboratory*) falls within the category of meaning of Health care service by a clinical establishment in terms of Notification 12/2017 C. T. – dt. 28/6/2017 as provided At Sr. no 74. And as such would fall under this exempt category of services.

- ii. **Whether the cost of Medicines and Consumables recovered from OPD patients along with nominal charges collected for Diagnosing by the pathological investigations, other investigation such as CT-Scan, MRI, Colour Doppler, Angiography, Gastroscopy, Sonography during the course of diagnosis and treatment of disease would fall within the meaning of “composite supply” qualifying for exemption under the category of “health care services.”**

In this context it is submitted that the Clause 2. (zg) provides the scope of “health care services” by hospital which covers wide range of services in respect of **diagnosis or treatment** or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India. As stated, the applicant institute collects vary nominal charges from patients **diagnosed** and treated through the OPD section of hospital which inter alia includes for various pathological and/or high-level



investigation and also for medicines and consumables provided the in order to cure from varied illness and as such charges would fall within the exempt category "health care services." as composite supply.

- iii. **Whether the nominal charges received from patients (who is an essential clinical materials for education laboratory) towards an "Unparallel Health Insurance Scheme" in order to retain their flow at one end for the purpose of imparting medical education and in alternative provide them the benefit of affordable and concessional rates for investigations and treatment at other end would fall within the meaning of "supply" eligible for exemption under the category of "health care services."**

It is submitted that in order to comply with such mandatory requirements of medical education, the Society had to attract the patients by providing patient's friendly atmosphere equipped with the teaching lab with the advance equipment, implements, apparatus & qualified experts as well as trained medical personnel, & at the same time had to provide medical treatment, at affordable cost to the rural population. For this purpose, Applicant Society have floated several schemes which inter alia includes Unparallel Health Insurance Scheme prescribing a premium of Re.1/- per year per resident of the concerned village & for urban population Rs.500/- for entire year for a family comprising of five members which ensures the substantial concession to them during the course of treatment of illness through OPD or through admitting them in hospital. Such charges are in the nature of consideration for the services agreed to be made for treatment of illness & falls within the category of health care services qualifying for exemption under entry 9993,

- iv. **Whether the nominal amount received for making space available for essential facilities needed by the students and staffs such as Banking, Parking, Refreshment which are support activities for attainment of main activities and further amount received on account of disposal of wastage would fall within the meaning of "supply" qualifying for exemption under the category of "educational/health care services."**

In this context it is submitted as under

- As already mentioned above that the main activity of the applicant society is education and for that purpose large section of society such as students, parents, patients, relative of patients, staff members, expert faculties, and many others remains within the premises and therefore they need various facilities like Banking, Parking, stay arrangement, Food items, Photocopy etc. for which the



required space is made available by the applicant society **at nominal charges.**

Further there is a realisation from disposal of waste and unusable items, equipment etc.

- Though the institution does not intend to collect such charges but in order to avoid misuse thereof some nominal charges are collected which is not a part of main activity of providing **medical education** and therefore such charges shall fall within the category of educational services qualifying for exemption as provided act SR.No. 64 of the notification no. 12/2017 issued on 27.06.2017.

3. Key findings which are having bearing on deciding the questions in Issue.

- i. However the applicants institutions fact are completely different since its **main domain is to provide medical education** for implementation of the effective health delivery system to the rural masses in general and those unprivileged in particular and the activity of the institution is on account of utter failure of Government in attracting the qualified and trained Doctors for fulfilling the said promises by going and settling down in the rural area **and as such cannot be tagged as business activity and thus obliging to comply with the provisions of GST Law.**
- ii. The Applicant's submission here-in-above, contending that it is not liable to be registered under the GST Act , **nowhere goes contrary** to these Judgements since the Applicant Institution was specifically excluded from the Scope of Dealer in the light of Exception II to section 2(8) which inter alia excluded the "Educational Institution" carrying on the activity of Buying, Selling, manufacturing in performance of its function for achieving its object and the **Institutions is still covered by the scope of "Educational Institution"**. In view this it is imperative that the facts of the Applicant Institution are to be looked into, which are completely different, since it falls within the scope of **Educational Institution and such any receipt under the category of supply is exempt.**
- iii. Though in various judicial pronouncement have held that the charitable institutions fall within the meaning of definition dealer but the applicant society's fact are different since no activity of commercial nature is being carried on and as such the facts of the society cannot be correlated/equated with those cases where the decision is given against the society and therefore the facts of the society are distinguishable with those one.
- iv. It is beyond doubt that the applicant Society is not obliged to get registered since the services provided by it i.e. educational services which inter alia includes the services rendered to poor patient, are not covered by the definition of "Supply" as per charging Section 7 of the CGST Act, 2017 defines the scope of supply which is liable for GST.



- v. Even in alternative it is treated as Supply still all the receipts falling within the scope of "Exempt Supply" and thus in terms of Section 23 permitted to remain without having registration. Further there being no occasion to register compulsorily under section 24 the Institute is not required to be registered under the GST Law and thus not obliged to comply with the provisions.

PRAYER:

- a. In view of the facts and circumstances & also uncontroversial status of law relating to the Applicant Society being "educational institution" having supported by the documents attached herewith, it cannot be labelled as carrying on any business thereby obliging it for registration under the GST Act & further compelling it to comply with the mandatory provisions of GST Act 2017 be shelved."

03. CONTENTION – AS PER THE CONCERNED OFFICER

The submission, as reproduced verbatim, could be seen thus-

- "1. Whether, a charitable society engaged in medical education can be said to be engaged in the business and they have to comply with the provisions of CGST & MGST, Act, 2017. Similarly, whether they are liable for registration under the provisions of Section 22 of the CGST Act; 2017 or they remain outside the purview of registration in view of provisions of Section 23 of the said act as there is no taxable liability.

Comments:- Applicant is providing the services of medical education and health care services. In this regard, the relevant statutory provisions in respect of the services rendered by healthcare services/clinical establishment and services provided by an educational institution is mentioned herewith,

- (i) **Notification No. 12/2017-Central Tax (Rate) dated: 28.05.2017.**

Sr	Chapter, No. Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
1	2	3	4	5
66	Heading 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 by way of pre-school education and education up to higher secondary school or equivalent.	Nil	Nil
74	Heading 9993	Services by Way of (a) health care services by a clinical establishment, an authorized medical practitioner or paramedics; (b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.	Nil	Nil

(11) Notification no, 09/2017-Integrated tax (rate) dated 28.06,2014 at Sr. No. 77.

Sr. No	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
77	Heading 9993	Services by Way of (a) health care services by a clinical establishment, an authorized 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.	Nil	Nil

(iii) Circular No. 32/6/18-GST dated 12.02.2018 at sr. No. 5

S.No.	Issue	Clarification
5	<p>Is GST leviable in following cases:</p> <p>(1) Hospitals hire senior doctors/ consultants technicians independently without any contract of such persons with the patient; and pay them consultancy charges, without there being any employer employee relationship. Will such refers]. (1) Services provided by consultancy charges be exempt from GST? Will revenue take a stand that they are providing services to hospitals and not to patients and hence must pay GST?</p> <p>(2) Retention money: Hospitals charge the patients, say; Rs.10000/- and pay to the consultants/ technicians only Rs. 7500/- and keep the balance for providing ancillary services which include nursing care, infrastructure facilities; paramedic services, emergency services, checking of temperature, weight, blood pressure etc. Will GST be applicable on such money retained by the hospitals? (3) Food supplied to the patients: Health care services provided by the clinical establishments will include food supplied to the patients; but such food may be prepared by the canteens run by the hospitals or may be outsourced by the Hospitals from outdoor caterers. When outsourced, there should be no ambiguity that the suppliers shall charge tax as applicable and hospital will get no. ITC. If hospitals have their own canteens and prepare their own food; then no ITC will be available on inputs including capital goods and in turn if they supply food to the doctors and their staff; such supplies, even when not charged, may be subjected to GST.</p>	<p>Health care services provided by a clinical establishment, an authorized medical practitioner or para-medics are exempt. (Sl. No. 74 of notification No. 12/2017- CT(Rate) dated 28.06.2017 as amended dated 28.06.2017 as amended senior doctors/ consultants/ technicians, fired by the hospitals, whether employees or not, are healthcare services which are exempt. (2) Healthcare services have been defined to mean 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[para 2(zg) of notification No. 12/2017- CT(Rate)]. Therefore, hospitals also provide healthcare services. The entire amount charged by them from the patients including the retention money and the fee/payments made to the doctors etc., is towards the healthcare services provided by the hospitals to the patients and is exempt. (3) 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.</p>

In view of above notifications and circular it is observed that the services rendered by an educational institution to its students, faculty and staff etc. and the health care services provided by a clinical establishment, an authorised medical practitioner or para-medics are exempted from payment of GST. However, as per above mentioned circular It is clarified that the food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite

supply of healthcare and not separately taxable but other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable.

II. Whether, the amount received for renting of space for banking, parking & refreshment & amount received on account of disposal of wastes would fall within the meaning of supply.

Comments:- As per the above mentioned notifications and circulars it is noticed that the services rendered by an educational institution to its students, faculty and staff etc. and the health care services provided by a clinical establishment, an authorised medical practitioner or para-medics are exempted from payment of GST. While **services provided by** an educational Institution are out of the GST ambit, the same *is* not the case with **services provided to** an educational institution. The GST exemption on services provided to an educational institution is available only to schools (from pre-school up to higher secondary school or its equivalent). Hence, the 'input' or supply of **services such as transportation, catering, housekeeping, services relating to admission or conduct of examination** to higher educational institutions will bear GST levy. Similar is the case of Services on which GST is to be paid on reverse charge mechanism. Further the **taxpayers** who are liable to pay the tax shall be liable to be registered under this Act, in the instant **case, thus** it appears that the services not covered under the purview of educational services or **health care services are taxable**. E.g. food services [i.e. other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable], the amount received for renting of space for banking, parking and refreshment and amount received on account of disposal of wastes would fall within the meaning of supply. Therefore, they are required to be registered under this act.

III. Whether they are liable for registration under the provisions of Section 22 of the CGST Act, 2017 or they remain outside the purview of registration in view of provisions of Section 23 of the said act as there is no taxable liability.

Comments :- In this regard the provisions of Section 22 & 23 of the CGST Act, 2017 is as under.

22. Persons liable for registration

(1) *Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees:*

Provided that where such person makes taxable supplies of goods or services or both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees.

(2) *Every person who, on the day immediately preceding the appointed day, is registered or holds a licence under an existing law; shall be liable to be registered under this Act with effect from the appointed day.*

(3) *Where a business carried on by a taxable person registered under this Act is transferred: whether on account of succession or otherwise, to another person as a going concern, the transferee or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession.*

(4) *Notwithstanding anything contained in sub-sections (1) and (3),*

23. Persons not liable for registration

(1) *The following persons shall not be liable to registration, namely:--*

(a) *any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the IGST Act;*

(b) *an agriculturist; to the extent of supply of produce out of cultivation of land.*

(2) *The Government may, on the recommendations of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this Act.*

In view of above provisions it is seen that the taxpayers who are liable to pay the tax shall be liable to be registered under this Act. In the instant case it appears that the services not covered under the purview of educational services or health care services are taxable. E.g. food services [i.e. other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable], the amount received for renting of space for banking, parking and refreshment and amount received on account of disposal of wastes would fall within the meaning of supply. Therefore, they are required to be registered under this Act.



04. HEARING

Preliminary hearing in the matter was held on 05.03.2019. Sh. R. S. Bhutada, C.A. and Sh. Sanjay Lukka, Advocate appeared and requested for admission of their application. Noone represented the department. However departmental submissions were received by mail.

The application was admitted and called for final hearing on 16.04.2019. Sh. R. S. Bhutada, C.A. and Sh. Sanjay Lukka, Advocate appeared made oral and written submissions. Jurisdictional Officer again, was not present.

05. OBSERVATIONS

We have gone through the facts of the case, documents on record and submissions made by both, the applicant as well as the jurisdictional office.

Applicant has submitted that they are an NGO registered as a Charitable Society at Sevagram, under the Registration of Societies Act, 1860 vide registration No.95/64 (Wardha) & are also registered under The Bombay Public Trust Act, 1950 vide registration No.F-87 (W), with the sole objective of attending the health needs of rural India. They are also registered under Section 12AA of the Income Tax Act, 1961 besides having recognition under The

Foreign Contribution Regulation Act 1976. They have also submitted that "MAHATMA GANDHI INSTITUTE OF MEDICAL SCIENCES" (MGIMS) was established in 1969 as a JOINT PROJECT with an agreed arrangement for funding the said project by Govt. of India, Govt. of Maharashtra and Applicant Society in the ratio of 50:25:25 respectively. They have further submitted that the Governing Council of MGIMS, as per University Statute comprises of Ten Members and a Chairman out of which, five Members are nominated by Kasturba Health Society and the remaining five Members are nominated by Central and State Governments.

From the above we find that the applicant and MGIMS can be considered as distinct persons since MGIMS is a joint project between the applicant and the State/Central Govts. Thus the education services are seen to be rendered by MGIMS and not the applicant.

Further, the applicant has cited some judicial decisions and have arrived at the conclusion that Judicial Authorities have already held that Applicant Society is a 'State' under Article-12 of Constitution of India. As per their submissions, the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in the case of *Ajay Gambhir & Ors. V/s Dean, Mahatma Gandhi Institute of Medical Sciences, Sevagram & Ors., 1985 Maharashtra Law Journal, P-597* as well as in the case of *B.M. Vidhwans V/s Nagpur University (S.C.A. No.1753 of 1977 decided on 16/18th July, 1980)* observed (Para -11) that – "*Thus, we see no difficulty whatsoever in holding that Respondent no. 12, I.e., (MGIMS) is a "State" within the meaning of Article 12.*"

Wide para 12 of the said Judgment, their lordship observed that "*One of the important tests to be applied is a functional test. Imparting higher medical education is the function of the Institute. This education is essentially concerned with national health. Articles 41 and 47 in Chapter IV deal with education and public health. They embody some of our national goals for fulfilling which public funds are being utilised by the Government. This education is regulated by several enactments with the sole object of achieving best standards. Those obtaining degree will be entitled to deal with human life at its crucial stage. Thus, the Institute in one sense is performing a statutory duty and is therefore also an instrumentally of "State".*"

From the above it is very clear that MGIMS has been considered a State, within the meaning of Article 12, by the Hon'ble Court. It is not that Kasturba Health Society has been considered as a 'State'. The conclusion drawn by the applicant that they can also be considered as 'State' is not correct since it is also seen that the Respondent in the above case mentioned by the applicant is MGIMS and not the applicant. Hence we can say that both the applicant and MGIMS are not one and the same organization.

In para c(iii) of their submissions, they have stated that "**the management decided to realize the Hospital charges.....**". Thus what they have submitted is that, the management of the MGIMS decided to levy such Hospital charges. This submissions also reveal that the management of the Hospital i.e MGIMS are different from the applicant.

In view of the above observations we refer to the questions raised in the subject application which are as under:-

Question No. (i) : *Whether the applicant, a Charitable Society having the main object and factually engaged in imparting Medical Education, satisfying all the criteria of "Educational Institution", can be said to be engaged in the business so as to cast an obligation upon it to comply with the provisions of Central Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017 in totality.*

In view of the submissions made by the applicant we find that it is MGIMS which appears to be engaged in imparting Medical Education and not the applicant. The applicant has entered into a joint project with the State and Central Governments to form MGIMS which has a different form from that of the applicant. Hence, the applicant cannot be said to be satisfying all the criteria of an "Educational Institution".

Question No. (ii) :- *Whether the applicant, a Charitable Society having the main object and factually engaged in imparting Medical Education, satisfying all the criteria of "Educational Institution" is liable for registration under the provisions of section 22 of the Central Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017 or it can remain outside the preview of registration in view of the provisions of section 23 of the said act as there is no Taxable supply*

In view of the foregoing observations made by us, we do not agree with the applicant's contention that they are imparting Medical Education and satisfying all the criteria of an "Educational Institution".

Scheme GST being a tax on the event of 'supply' every supplier needs to get registered. However, as per the scheme of the Act, not every supplier is required to get registered. Only those suppliers, whose aggregate turnover of all supplies exceeds the threshold limit as prescribed under Section 22 (including exempted and taxable supplies). Thus to be registered a person satisfies two conditions namely, supply of taxable goods or services or both and aggregate turnover in a financial year exceeds threshold limit. The expression 'taxable supply' has been defined under the Act, as below:

Section 2(108): *"taxable supply" means a supply of goods or services or both which is liable to tax under this Act;*

Thus a person who is engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax is not liable for registration under Section 22 of the GST Act. Thus even without referring to section 23 of the Act, we can say that a person, whose aggregate turnover of all supplies is other than taxable supply, is not liable for registration.

Section 23, provide exemption to certain category/ class of person from obtaining registration under the Act. Such category consist of persons who are engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax or an agriculturist, to the extent of supply of produce out of cultivation of land.

Section 24 deals with compulsory registration with respect to categories of persons specified therein. As per Section 24, various categories of persons including those who are required to pay tax under reverse charge shall, notwithstanding anything contained in subsection 1 of Section 22, be required to get registered under the Act.

The applicant has not given details of the business conducted by it and therefore considering the fact that it is MGIMS and not the applicant who are imparting Medical Education, the liability of the applicant to obtain registration will depend on the facts and circumstances of their business.

Question No. (iii)(a) :- Whether the fees and other charges received from students and recoupment charges received from patients (who is an essential clinical material for education laboratory) would constitute as "outward supply" as defined in section 2 (83) of The Central Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017 and if yes then whether it will fall in classification entry at Sr. No 66 or the portion of nominal amount received from patients (who is an essential clinical material for education laboratory) at Sr. No. 74 in terms of Notification 12/2017 Central Tax – dt. 28/6/2017.

From the submissions made by the applicant we find that such fees and other charges and recoupment charges appear to be collected by MGIMS/Kasturba Hospital. Since the supply in this case is not done by the applicant, as per Section 95 of the CGST Act, they cannot apply for advance ruling and the same is outside the purview of this authority.

Question No. (iii)(b) :- Whether the cost of Medicines and Consumables recovered from OPD patients along with nominal charges collected for Diagnosing by the pathological investigations, other investigation such as CT-Scan, MRI, Colour Doppler, Angiography, Gastroscopy, Sonography during the course of diagnosis and treatment of disease would fall within the meaning of "composite supply" qualifying for exemption under the category of "educational and / or health care services."

From the submissions made by the applicant we find that such fees and other charges and recoupment charges appear to be collected by MGIMS/Kasturba Hospital. Since the supply in this case is not done by the applicant, as per Section 95 of the CGST Act, they cannot apply for advance ruling and the same is outside the purview of this authority.

Question No. (iii)(c) :- Whether the nominal charges received from patients (who is an essential clinical materials for education laboratory) towards an "Unparallel Health

Insurance Scheme” to retain their flow at one end for the purpose of imparting medical education as a result to provide them the benefit of concessional rates for investigations and treatment at other end would fall within the meaning of “supply” eligible for exemption under the category of “educational and / or health care services.”

It is not clear from the submissions as to who is receiving such nominal charges from patients. From the submissions made by the applicant we find that such charges appear to be collected by MGIMS/Kasturba Hospital and since the supply in this case is not done by the applicant, as per Section 95 of the CGST Act, they cannot apply for advance ruling and the said matter is outside the purview of this authority.

Question No. (iii)(d) :- Whether the nominal amount received for making space available for essential facilities needed by the students and staffs such as Banking, Parking, and Refreshment which are support activities for attainment of main activities and further amount received on account of disposal of wastage would fall within the meaning of “supply” qualifying for exemption under the category of “educational and/or health care services.”

It is not clear from the submissions as to who is receiving such nominal amounts from students and staff. From the submissions made by the applicant we find that such amounts appear to be collected by MGIMS/Kasturba Hospital and since the supply in this case is not done by the applicant, as per Section 95 of the CGST Act, they cannot apply for advance ruling and the said matter is outside the purview of this authority.

05. In view of the extensive deliberations as held hereinabove, we pass an order as follows :

ORDER

Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

CGST-ARA- 120/2018-19/B-

51

Mumbai, dt. 04/05/2019

For reasons as discussed in the body of the order, the questions are answered thus –

Question (i): Whether the applicant, a Charitable Society having the main object and factually engaged in imparting **Medical Education**, satisfying all the criteria of “Educational Institution”, can be said to be engaged in the business so as to cast an obligation upon it to comply with the provisions of Central Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017 in totality.

Answer :- In view of the discussions made above it is MGIMS which appears to be engaged in imparting medical education and not the applicant. The applicant has entered into a joint project with the State and Central Governments to form MGIMS which is an entity different from that of the applicant. Hence, the applicant cannot be said to be satisfying all the criteria of an “Educational Institution”.

Question 2:- Whether the applicant, a Charitable Society having the main object and factually engaged in imparting medical education, satisfying all the criteria of "Educational Institution" is liable for registration under the provisions of section 22 of the Central Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017 or it can remain outside the purview of registration in view of the provisions of section 23 of the said act as there is no Taxable supply.

Answer :- As applicant has been found to be not an educational institution, the applicant falls within the scope of Sections 22 or 24 of the GST Act, 2017, they are liable to obtain registration if they provide taxable services and their turnover exceeds the threshold limit prescribed for registration.

Questions (iii) (a) to (d) is rejected as being not maintainable.



Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai
5. Joint commissioner of State tax , Mahavikas for Website.

sd
B. TIMOTHY
(MEMBER)

sd
B. V. BORHADE
(MEMBER)

CERTIFIED TRUE COPY

sd
MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai - 400021.