

THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX
(constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)

ORDER NO. MAH/AAAR/SS-RJ/14/2018-19

Date- 24.12.2018

BEFORE THE BENCH OF

(1) Smt. Sungita Sharma, MEMBER

(2) Shri Rajiv Jalota, MEMBER

GSTIN Number	27AABTS2637Q12W
Legal Name of Appellant	Shrimad Rajchandra Adhyatmik Satsang Sadhana Kendra
Registered Address	3 rd , Floor, Bhupati Chambers, Mathew Road, Opera House, Mumbai City, Maharashtra – 400004.
Details of appeal	Appeal No. MAH/GST-AAAR-14/2018-19 dated 28.09.2018 against Advance Ruling No. GST-ARA-41/2017-18/B-48 dated 14.06.2018
Jurisdictional Officer	Assistant Commissioner of Sales Tax (D-836) Nodal Division -3, Mumbai F-09, 7th Floor, GST Bhavan, Mazgaon, Mumbai- 400 010.

PROCEEDINGS

(under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

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 such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the MGST Act.

The present appeal has been filed under Section 100 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 Shrimad Rajchandra Adhyatmik Satsang Sadhana Kendra (herein after referred to as the “Appellant”) against the Advance Ruling No. GST-ARA-41/2017-18/B-48 dated 14.06.2018.

BRIEF FACTS OF THE CASE

- A. The Appellant is a public charitable and religious trust engaged in advancement of the teachings of Paramkrupaludev Shrimad Rajchandra and spreading the knowledge of Jain Religion entrusted by Shri Mahavir Swami and other Tirthankars.
- B. The main object of the Appellant trust is to spread the knowledge of the Jain Dharam and advancement of teachings of Paramkrupaludev ShrimadRajchandra.
- C. The ancillary and incidental objects of the Appellant trust are to carry out activities for advancement of main object such as satsang, shibirs, etc. To spread knowledge of the Jain dharam through publications of books, audio CDs, DVDs, etc. and other materials for students and public in general and to set up organizations for helping people. The ancillary object also includes protecting birds and animals from being killed in slaughter houses, and other activities.
- D. The Appellant was registered under the erstwhile Maharashtra Value Added Tax Act, 2002 in view of the specific Explanation in the definition of “dealer” under Section 2(8) of the MVAT Act, 2002.
- E. With effect from 1.7.2017, the Goods and Service Tax was brought into force and the existing registered dealers under the erstwhile MVAT Act, 2002 were migrated to GST.
- F. In preparation for implementing GST, the Commissioner of Sales Tax, Maharashtra issued Circular No. 35T of 2016 dated 12.11.2016 mandatorily requiring the existing registered dealers under the provisions of MVAT Act, 2002 to enroll themselves for GSTIN.
- G. Thus, the Appellant was also migrated to the GST and Registration Certificate was issued to Appellant on 22-09-2018 in Form GST REG – 06.
- H. Though the Appellant has been registered under GST, the Appellant has not filed any returns since the Appellant is not engaged in any business as defined under the Section 2(17) of the CGST Act, 2017.



- I. The Appellant filed Advance Ruling Application No. 41 dated 17.03.2018 before the Advance Ruling Authority with all the supporting documents and judgments to determine whether the activities carried out by them would fall under the definition of business as defined under the Section 2(17) of the CGST Act, 2017. Further the question was raised as to whether they are liable for registration under the provisions of the CGST Act, 2017 and the MGST Act, 2017.
- J. The Appellant further specifically raised the question whether the sale of spiritual products which are incidental and ancillary to main charitable object of the appellant can be said to be business as defined under Section 2(17) of the CGST Act, 2017.
- K. The Advance Ruling Authority vide its order dated 14.06.2018 has answered all the questions raised by the Appellant in affirmative and against the Appellant.
- L. Being aggrieved by the said advance ruling, the appellant is filing the present appeal before Appellate Authority.

Grounds of Appeal

The Advance Ruling Order has been passed without considering all the submissions of the Appellant.

1. The Advance Ruling Authority has not considered the main and the incidental objects of the Appellant trust to determine whether the same amounts to business in view of the definition of the "business" under Section 2(17) of the CGST Act, 2017. The appellant had specifically submitted that the activity of the appellant involves supply of products at cost or lower than cost to advance its incidental and ancillary objects. The said facts though noted by the Id. Advance Ruling Authority, has not been discussed in the findings of the ARA.
2. The Appellant further submits that Advance Ruling Authority has discussed the exemptions under the GST laws which does not pertain subject matter of the questions raised by the appellant before the Ld. ARA. Thus Ld. ARA has discussed and answered on questions not raised by the Appellant in its Application.
3. The Appellant further submits that Ld. ARA in the impugned order has discussed on various exemption available to services and whether the same is taxable at the hands of



the Appellant. The Appellant submits that the said discussion of the Ld. ARA is beyond the scope of the question raised by the Appellant in Advance Ruling Application. The Appellant states that no question was raised by the appellant on exemption of various services provided by the Appellant. Thus, the findings of the Ld. ARA on services provided by the Appellant is ex-facie erroneous and not binding on the Appellant. Thus, the Advance Ruling Order needs to be set aside on this ground alone.

4. The Appellant submits that Ld. Advance Ruling Authority has failed to appreciate the settled legal positions and ratio laid down by the Hon'ble Supreme Court in a number of cases on the subject matter of the questions raised by the Appellant. The said judgments of the Supreme Court, if not binding as precedents, are driving authorities to decide the questions raised by the Applicant.
5. Ld. ARA has observed that the said precedents are on different context and hence cannot be considered or relied upon in the facts of the present case.
6. The Appellant submits that, the Ld. ARA has made no attempt to distinguish the said precedents in the body of the Order even on the facts of the case. It is settled law that mere passing of order without reasoning is a non-speaking order and hence not tenable in law or binding on the Appellants.
7. The Appellant submits that they are not engaged in any of the business activity as defined under the Section 2(17) of the CGST Act, 2017.
8. The said Section 2(17) is reproduced below for ready reference:

(17) "business" includes—

(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;

(b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);

(c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;



(d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;

(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;

(f) admission, for a consideration, of persons to any premises;

(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

(h) services provided by a race club by way of totalisator or a licence to book maker in such club ; and

(i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

9. The Appellant submits that, the business definition is an inclusive definition and has various specific clauses to be included in the definition of business.
10. The main clauses relevant for the present application are as Clause (a) and Clause (b). The Appellant submits that other clauses are not applicable in the facts of the present case.
11. Clause (a) provides that any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit shall be included in the definition of business.
12. The Appellant submits that in the present case, the Appellant is a public charitable trust with the main object of advancement of religious and spiritual teachings and not engaged in any trade, commerce, manufacture, profession, vocation adventure, wager or any other similar activity. Further, the Appellant does not get any pecuniary benefit from various activities carried out by the Appellant under the main object of spreading religious and spiritual teachings.
13. It is settled law that where the public charitable trust carries out activity for advancement of its main object of charitable purpose, the same cannot be said to be business in



commercial sense as defined in the taxing statute. There is no motive to earn profit out of the said activities and profit earned if any is spent on the advancement of the general public utility and hence, there cannot be said to be any business which is carried out by the Public Charitable Trust.

14. Thus, in the present case also, the main object of the Appellant being advancement of the religious and spiritual teachings of Paramkrupalu Shimad Rajchandra, the Appellant cannot be said to be carrying out business as defined in Section 2(17) of the CGST Act, 2017.
15. The Appellant submits that, once the main object of the Appellant cannot be considered as business, the ancillary or incidental objects also cannot be considered as business.
16. The Appellants submits that, it sells various spiritual products such as Books, Audio CDs, DVDs, Statues which are for the advancement of the religious teachings of the Paramkrupalu Shrimad Rajchandra. The said books give in-depth study of the teachings of Gurudev and are only for spreading the religious message. The DVDs and CDs are recorded pravachan, satsang, spiritual songs and bhajans for those who cannot be personally present at the events.
17. The Appellant further submits that, the said products are sold at cost or less than cost. The costing and the selling price of the illustrative products has already been submitted by the Appellant before the Ld. ARA and noted in the impugned order.
18. Thus, the Appellant submits that, the Appellant cannot be said to be carrying out business even for the publications being sold by the Appellant to the devotees of Paramkrupalu Shrimad Rajchandra.
19. The Appellants rely on the judgment of 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 and not business. The Supreme Court held that where the main and dominant activity of the assessee trust in that case was to spread message of Sai Baba, then bringing out



publications and sale thereof by the assessee Trust to its devotees at cost price did not amount to business.

20. The Appellant further relies on the judgment of Hon'ble Supreme Court in the case of **CIT Vs. Gujarat Maritime Board (2007) 14 SCC 704 (SC)**, wherein the Hon'ble Supreme Court held that if the primary or predominant object of the trust is charitable, then any other object which might not be charitable but which is incidental or ancillary to the dominant object will also be considered as charitable.

21. In view of the settled legal provision, the Appellant in the present case also cannot be considered as carrying on business even for the ancillary and incidental activity of selling the spiritual products.

Since, the Appellant is not engaged in the carrying out business activity, the Appellant cannot be said to be making supplies liable for GST.

22. The Appellant submits that Section 7 of the CGST Act, 2017 defines the scope of supply which is liable for GST. The relevant portion of said Section 7 is extracted below for ready reference:

7. (1) For the purposes of this Act, the expression "supply" includes—

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

23. From a plain reading of the above Clause (a) of Section 7(1) it is clear that supply will be liable to GST only when it is made for a consideration in the course or furtherance of business.

24. As submitted above, since in the present case, the Appellant is not carrying out any business, there can be no supplies liable to GST at the hands of the Appellant.

25. Since the aggregate of taxable supplies of goods and services does not exceed Twenty Lakh Rupees, the Appellant is not liable for registration under Section 22 (1) of the CGST Act, 2017.

26. The Appellant submits that Section 22(1) of the CGST Act, 2017, provides for registration



under the CGST Act, 2017. The said Section 22(1) is extracted 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.

27. In the present case, the Appellant submits that, the Appellant does not make any taxable supplies so as to be liable for registration under the provisions of Section 22(1) of the CGST Act, 2017.
28. Further, since the Appellant is not engaged in carrying out business as defined under Section 2(17) of the CGST Act, 2017, the other provisions and rigors of the CGST Act shall not be applicable to the Appellant.

Personal Hearing

The case was fixed for hearing on 20.11.2018. Shri C B Thakar (Advocate) attended the hearing on behalf of the appellant . He stated that the appellant is a public charitable trust and is formed to spread the teachings of Paramkrupaludev Shrimad Rajchandra. The activities are done through lectures, yoga and satsang. The trust also sells books/CDs etc at token cost. He referred to the grounds of appeal and to the SC judgement in the case of Sai Publications on 'business' and contended that the appellant is not in business. He further said that the main object is spiritual and not business. He referred to the judgement in the case of Gujarat Maritime Board.

The jurisdictional officer also attended and reiterated the submissions made before the advance ruling authority.



Discussion and Findings

It was the contention of the appellant before the ARA that the main object of the appellant's trust is to spread the knowledge of Jain Dharma and advancement of teaching of Param Krupalu Dev – Shrimad Rajchandra. After hearing the appellant and going through the objects of the trust, the ARA have held that the appellant which is a charitable trust is said to be in business and therefore their activity attracts the provisions of the CGST Act, 2017. It was further held by the ARA that the trust is liable to registration under the provisions of CGST Act.

It is seen from the ARA and from the grounds of appeal that the main argument advanced by the appellant is that they are not carrying on the business in terms of section 2(17) of the CGST Act. The said definition is reproduced above in grounds of appeal.

With reference to the above definition, the appellant has contended that it is a public charitable trust with the main object of advancement of religious and spiritual teaching and is not engaged in any trade, commerce, manufacture, profession, vocation, wager or in other similar activities. Also, it is put forth by the appellant that as the main object cannot be considered as business, the ancillary or incidental object also cannot be considered as business. The incidental activity as per the appellant is that it sells various spiritual products such as books, audio CDs, DVDs, statutes, calendars etc. which are for the advancement of the religious objectives of the Trust. The books are based on the teachings of their Gurudev and the DVDs and CDs contain the religious pravachan, satsang, spiritual songs and bhajan for those who could not be personally present at the event.



We have considered the submissions of the appellant. However , we agree with the decision of the advance ruling authority that the definition of 'business' under the CGST Act is wide enough to include trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activities. The term 'trade' is a comprehensive term which covers the activity of buying, selling or exchanging goods or services. The terms 'trade and commerce' by themselves mean the buying or selling goods or services between people. The charitable trust may be formed with the fundamental objectives of carrying out spiritual activity and salvation. But it also, at the same time, sells goods and services under the auspices of the trust. The trust sells various goods and services to the people desiring to buy them and such an activity by itself forms a part of the objective of the trust. Under the heading – '**OTHER OBJECTIVES OF THE TRUST**' and the heading '**ACTIVITY OF SPREADING THE KNOWLEDGE**' the trust has printing and publishing as one of the objectives of the trust. In the various objectives of the trust listed it is also seen that the trust can dispose its property, buy and sell securities, sell the trust property by public auction or let it out on lease etc. Therefore, we see from the above objectives of the trust that though it is public charitable religious trust by name, activities of trade and commerce also form a major part of the objectives of the trust. We do not agree with the contention of the appellant that there is main activity and incidental activity in the said case. The main activity or object of the trust includes trade and commerce and as the definition of 'business' under the CGST Act includes the words 'trade and commerce' it can be said that the appellant is engaged in supply of goods and services and is therefore liable to get itself registered. The definition of 'supply' in CGST Act is as follows:-

7. Scope of supply.



(1) For the purposes of this Act, the expression "supply" includes—

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(b) the activities specified in Schedule I, made or agreed to be made without a consideration; and

(c) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

(2) Notwithstanding anything contained in sub-section (1),—

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of sub-sections (1) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods.

The appellant sells goods and services for consideration and its various activities come within the ambit of definition of 'supply'. We have already held forth as how the appellant can be said to be engaged in the business. Therefore, the said supply of spiritual products like books, CDs and DVDs are in the nature of supply in the course of business.

It is seen that the Notification No.12/2017 dt.28 June, 2017 under CGST Act exempts services provided by the entity registered u/s. 12AA of the Income Tax Act, 1961, by way of charitable activities from the whole of GST vide Entry No.1 of the Notification. Charitable activities under the notification have been defined as under:-

(r) "charitable activities" means activities relating to –



(i) public health by way of :- (A) care or counseling of (I) terminally ill persons or persons with severe physical or mental disability; (II) persons afflicted with HIV or AIDS; (III) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or (B) public awareness of preventive health, family planning or prevention of HIV infection;

(ii) advancement of religion , spirituality or yoga; 22

(iii) advancement of educational programmes or skill development relating to,- (A) abandoned, orphaned or homeless children; (B) physically or mentally abused and traumatized persons; (C) prisoners; or (D) persons over the age of 65 years residing in a rural area;

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

Thus, it is seen that certain services supplied by charitable trust are exempt from GST. A CBIC flier on 'GST on Charitable and Religious Trust' explains the scope of charitable activities which are exempted from levy of GST. It is clarified in the said flier that services of transportation of passengers, granting of advertisement rights, publication of the trust admission to event, all will be leviable to GST. There are also other notifications under CGST Act which provide specific exemption to certain services by charitable trusts. Entry No.10 of the Notification No.9/2017, dt.28.06.2017 under IGST Act, exempts the services received by charitable trust registered u/s.12AA of the IT Act, 1961, from the provider of services located outside India and the trust is not liable to pay GST on import of such services under Reverse Charge Mechanism. However, the exemption is not extended to OIDAR services received by charitable trust. There is also a specific exemption on services provided by charitable institution registered u/s.12AA of the IT Act, 1961, by way of advancement of religion, spirituality or yoga. Any fees or consideration charged from the participant for participating in religious program or Yoga meant for advancement of religion, spirituality or yoga is exempted. Further there is entry No.15 of Notification No.12/2017 dt.28.06.2017, where no GST is applicable on activities of public library including those run by charitable or religious trust.



What can be seen from the above notifications is that specific exemption from GST is given to charitable institutions registered u/s.12AA of the IT Act, 1961. **It can be gathered from the above that the intention of the legislature is to tax all the activities of supply goods and services by charitable trust except those specifically exempted.** This is with the background that charitable institutions qua their activities of charity do not lend themselves to any specific concession or exemption from the definition of 'supply' or 'business' or 'taxable person'. The very fact that certain services have been carved out and given out a special treatment makes it clear that all trade and commerce transaction of selling books, statutes, CDs and DVDs etc. done commercially for consideration come within the broad ambit of 'business' under the CGST Act.

In the grounds of appeal, it is contended by the appellant that the ARA has not taken cognizance of the Supreme Court judgment in the case of Sai Publication (Appeal No.9445 of 1996 dt.22.03.2002). The said judgment is given under the provisions of the BST Act, 1959, and the definition of 'business' in the said Act is different from the definition under CGST Act. The definition under the CGST Act is wider than the one under the BST Act. Also the background of the Act and the structure of the statute which includes not just the Act but also the Rules, schedule and notification have to be considered. We have already discussed the various aspects of the charitable institutions with reference to the definition as well as the notification. This was not the case under the BST Act. Therefore, the judgment given by the Supreme Court is on different context. Under the BST Act, there were no notification providing specific exemption to charitable trusts which is very much there under the CGST Act. The rule of 'harmonious interpretation' says that that every statute has been made for a purpose and



specific intent as per law and it should be read as a whole and interpreted accordingly. The aim of the courts are to make an interpretation which makes the enactment consistent and a construction which avoids inconsistency or repugnancy between the various sections or parts of the statute. In the present case, a reading of the GST Act/rules/notifications/exemptions show that the intent is to consider 'charitable/religious trusts' as taxable persons effecting taxable supply of goods/services and they have been given specific exemptions in some areas. As said earlier, the BST law had no such exemption provisions. Therefore, we say that the judgment is not applicable here nor the other judgments cited by the appellant which are also given under the provisions of the BST Act.

In view of the above discussion and findings, we pass the following order--

ORDER

(Under Section 101(1) of the CGST Act, 2017 and MGST Act, 2017)

For reasons discussed above, we do not find any reason to interfere with the order of the Advance Ruling Authority in this matter.


Rajiv Jalota
(Member)




Sungita Sharma
(Member)

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