

BHUJ BRANCH OF WIRC OF ICAI

E-NEWSLETTER FOR THE MONTH OF OCTOBER-2018

(FOR PRIVATE CIRCULATION ONLY)

CA. Darshan Khandol

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8866583411

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9825858580

CA. Jitendra Thacker

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9426803457

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Member

9879379801

CA. Bhavee Thacker

Imm. Past Chairperson

9825227449

CA. Pradeep Agrawal

Branch Nominee

9898560967

CA Jagrut Anjaria

Newsletter Advisor

9426788728

Address:-

**311, Balram Complex, 3rd Floor
Near ICICI Bank, Station Road
Bhuj-Kachchh
Phone:-258580
E-mail:-bhujbranch.wirc@gmail.com**



CHAIRMAN'S COMMUNICATION

Respected Colleagues,

The month of October is celebrations time for Gujaratis as festivals like Navratri comes in this month. But unfortunately now a days no such celebrations for CAs due to due dates and tax audit seasons. Professionals do not have option but to complete the task anyhow. Fortunately we got date relaxation this time after representations from the institute and many professional organisations, but we have to habituate ourselves with these deadlines. At the same time we also need to take care for our health and fitness.

After break of 1 month in this busy month of Tax Audit, now again we will come with many good and important CPE programs with relevant topics like GST audit for members as well as students. We are planning at least 4 CPE programs during this month of October, 18 for approximately 10-12 CPE hours.

After the festival seasons of Navratri and Diwali we are also planning some picnic or RRC during the month of November or December. So members are requested to give their suggestions for the same.

I also request members to contribute to branch activities by way of effective suggestions and innovative thoughts for the benefit of members.

Wishing all the members a Hapy Navratri and festive seasons,

Thank you

CA DARSHAN KHANDOL
Chairman, Bhuj Branch of WIRC of ICAI

GST on commercial activities by charitable and religious trusts with reference to an AAR Ruling

CA Chunauti H.Dholakia
B.Com., FCA,DISA(ICAI)

Generally charitable and religious trusts are formed with the main object of advancement of religion and spirituality. In addition to main object, these trusts also arranges Satsangs, Shibirs, yoga camps etc. and sales spiritual materials like books, magazines, CDs, DVDs, MP3 etc for the object of spreading of knowledge of the religion. It is general understanding that as the purpose of these activities is charitable, and these activities undertaken by the trust is incidental/ancillary to main charitable object, GST is not leviable on it. But recent advance ruling by Maharashtra Authority for Advance Rulings in case of Shrimad Rajchandra Adhyatmik Satsang Ssadhna Kendra has negated this view. It has established that exemption from payment of GST is based on nature of activities undertaken and not on the status of the entity. Facts and ruling of the case is as under:

Brief fact of the Case:

Shrimad Rajchandra Adhyatmik Satsang Sadhna Kendra, registered under section 12AA of the Income Tax Act is a public charitable and religious trust formed with the main object of spreading of knowledge of Jain Dharma and advancement of teaching of Param Krupaludev Shrimad Rajchandra. The ancillary and incidental objects of the trust are to carry out activities for advancement of main objects such as Satsang, Shibirs, yoga camps etc. and to spread knowledge of Jain dharma through publication and sale of books, DVDs, MP3 and other spiritual products including diary, calendar, greeting cards, statue, stickers, box covers etc. for students and public in general. The trust has other ancillary objects also. The trust has sold spiritual products and income from sale of such products was used for charitable purpose. The trust was registered under erstwhile Maharashtra Value Added Tax Act, 2002 and migrated to GST after its implementation. But no return was filed as the trust was containing that it is not engaged in any "business activity" as defined u/s. 2(17) of CGST Act, 2017. The trust contended that there is no motive of profit out of such activities. Hence the same cannot be said to be business in the commercial sense. Moreover, main object of the trust being advancement of the religious and spiritual teaching cannot be said to be the business as defined u/s. 2(17) of the CGST Act. As the main object of the entity cannot be considered as business, the ancillary or incidental objects also cannot be considered as business. Hence sale of spiritual products which is ancillary to main charitable object of the trust cannot be considered as business. But after verifying definition of "business" and "supply" as per CGST Act and after considering other facts of the case, the AAR ordered that such activities undertaken by the charitable trust cannot be considered

as “charitable activities”. Hence generation of income from sale of spiritual products and income from accommodation of foods in various satsang/shibir/yoga camps on payment/chargeable basis attracts GST.

Analysis of the case:

The case seeks to verify whether ancillary activities undertaken by the trust can be considered as business in commercial sense and whether it is liable for GST. To verify the same, it is necessary to examine whether such activity is covered under “supply”. It is also necessary to verify definition of the term “business” and “commerce” to determine taxability of these activities.

Portion of section 7 of CGST Act, which is relevant in this case is as under:

7.(1) For the purpose 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.

The term “supply” is all-encompassing, subject to exceptions carved out in the relevant provisions. E.g. supplies mentioned in Schedule III of the Act. Hence if above form of transactions are made for consideration and made in the course or furtherance of “business”, it will be covered under “supply”.

The term “business” is defined in section 2(17). Clause (a), (b) and (c) of section 2(17) of CGST Act which is relevant in this case is as under:

2(17) “Business” includes:

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

Meaning of the word “trade” as per business dictionary” is “a commercial transaction involving sale and purchase of goods, services or information”.

Meaning of the word “commerce” as per business dictionary is “exchange of goods or services for money or in kind, usually on a large scale enough to require transportation from place to place or across city, state or national boundaries.”

The trust sold spiritual materials for consideration. Even if selling of such material is not made for profit motive, and the amount received from sale of such material is used for charitable purpose, such activity can be considered as “business” u/s. 2(17) of CGST Act. Hence such activities of the trust are covered under the scope of “supply” as given in section 7 of the CGST Act and therefore liable to GST.

Moreover, supply of goods by the trust is not exempt supply, as “exempt supply” defined u/s. 2(47) of CGST Act is “supply of goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax u/s. 11, or u/s.6 of the IGST Act and includes non-taxable supply”. Hence supply of goods which are taxable and are not nil rated are liable for GST in the hands of Charitable Trust as well.

Some court rulings direct that if the primary and predominant object of the trust 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. Similar judgment was reiterated by Supreme Court in case of CIT vs. Gujarat Maritime Board (2007) 14 SCC 704 (SC) and in case of Commissioner of Sales Tax vs. Sai Publication Fund (2002) 4 SCC 7 (SC). Bombay High Court has also reaffirmed this view in case of Commissioner of Sales Tax vs. Cutchi Dasha Oswal Mahajan Udyog Committee (36 STC 1) (Bom.).

But GST Act does not consider ancillary or incidental activities of the charitable trust as “charitable activities”. The definition of the term “charitable activities” as per notification No. 12/2017- Central Tax (rate) is as under:

“Charitable activities means activities relating to

1) 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 or (ii) 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.

(2) Advancement of religion, spirituality or yoga.

(3) Advancement of educational programs 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,

(4) Preservation of environment including watershed, forests and wildlife

In this case the accommodation and food provided in various Satsang/Shibirs/yoga camps are not free for the participants, as the trust charges some amount from

participants in the name of accommodation or participation. The activity undertaken by the trust on payment/chargeable basis is commercial activity and it cannot be covered under advancement of religion, spirituality or yoga. Hence activity of arrangement of Satsang/Shibirs/yoga camps or arrangement of fitness camps cannot be considered as “charitable activity” within the meaning of definition mentioned above. Hence even if the charitable trust is registered u/s. 12AA of the Income Tax Act, it does not satisfy criteria for exemption under GST.

Advance Ruling in this case:

Maharashtra AAR ordered that sale of any goods in the form of spiritual materials by the charitable trust for consideration is covered under the term “supply” and shall attract GST. Also, accommodation and food provided in various Satsang/Shibir/yoga camps on payment/chargeable basis cannot be considered as “charitable activities” and therefore liable for GST. The charitable trust having main object of advancement of religion, spirituality or yoga is liable to registration subject to threshold limit prescribed under section 22 of the CGST Act.

Conclusion:

Applicability of GST depends on nature of activity not on the purpose of activity.. If the activity is undertaken on chargeable basis, the nature of activity cannot be considered as “charitable” even if the amount received from the activity is used for the charitable purpose. Hence the amount received for such activity in the name of accommodation or participation fee or in the name of donation for such activity is taxable under GST. Similarly irrespective of purpose of sale of goods or material, such activity undertaken by the charitable and religious trust is taxable under GST.

TDS UNDER GST

CA Abhay Thacker
B.Com.,ACA,Int.CS

CBIC notifies that Section 51 of the CGST Act (provisions related to TDS) will come into force w.e.f. 01.10.2018 vide Notification No. 50/2018 – Central Tax Dated: 13th September, 2018

1. What is TDS?

Tax Deducted at Source (TDS) is one of the ways to collect tax based on certain percentages on the amount payable by the receiver on goods/services. The collected tax is revenue for the government.

2. Who could be liable to deduct TDS under GST law?

- A department or an establishment of the Central Government or State Government; or
- Local authority; or
- Governmental agencies; or
- Such persons or category of persons as may be notified by the Government.

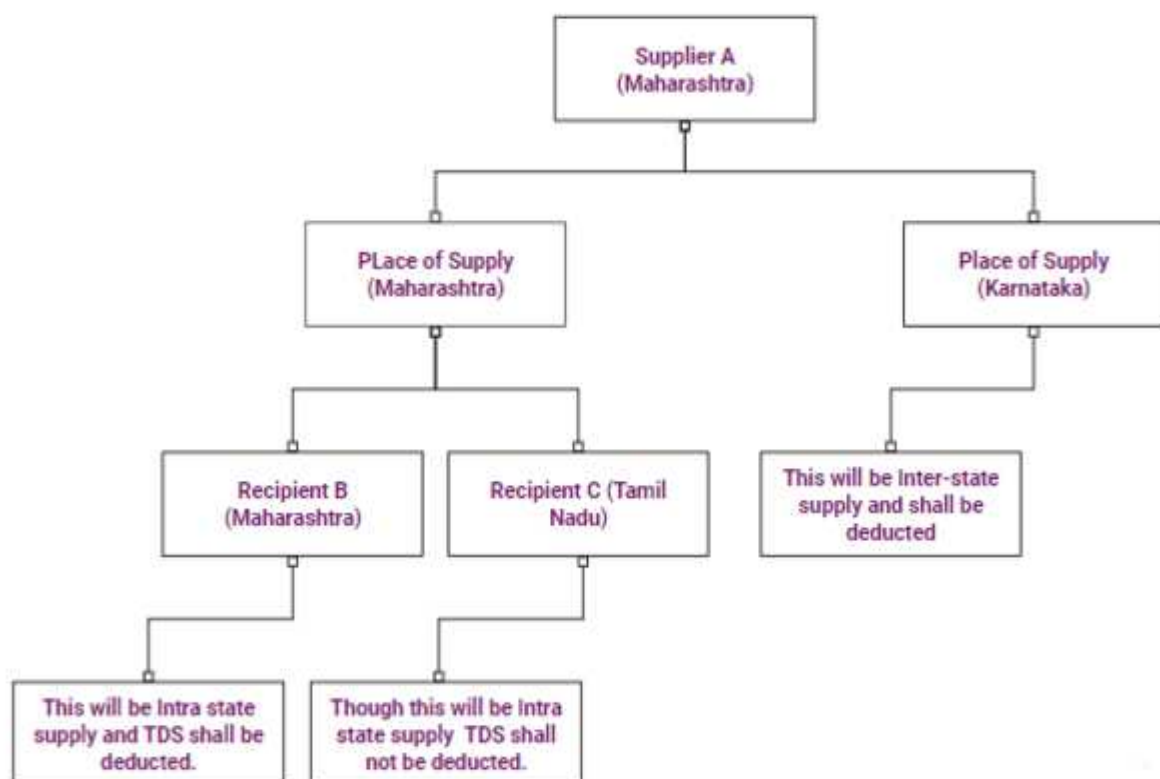
As per the latest Notification dated 13th September 2018, the following entities also need to deduct TDS-

- An authority or a board or any other body which has been set up by Parliament or a State Legislature or by a government, with 51% equity (control) owned by the government.

- A society established by the Central or any State Government or a Local Authority and the society is registered under the Societies Registration Act, 1860.
- Public sector undertakings.

3. When will the liability to deduct TDS be attracted? What is the rate of TDS?

TDS is to be deducted at the rate of 2 percent (CGST @ 1% and SGST @ 1%, in case of intra state supply or IGST @ 2%, in case of inter state supply) on payments made or credited to the supplier of taxable goods and/or services, where the total value of such supply, under an individual contract, exceeds Rupees 2,50,000/- (being two lakh fifty thousand rupees). No deduction of Tax is required when the location of supplier and place of supply is different from the State of the registration of the recipient.



4. How will the Value of supply on which TDS shall be deducted be considered?

For purpose of deduction of TDS, the value of supply is to be taken as the amount excluding the tax indicated on the invoice. This means TDS shall not be deducted on the CGST, SGST or IGST component of invoice.

For Example, **Supplier A** makes a supply worth Rs. 5,000 to **Supplier B**. The rate of GST is 18%. When B makes payment to A, **Supplier B** will pay Rs. 5000 (worth of Supply) + Rs 900 (GST) to A and Rs. 100 (RS. 5000*2%) as TDS to the government. So it can be said that TDS is not deducted on the tax element (GST) of a transaction.

5. What are the registration requirements for TDS deductors?

A person who is liable to deduct TDS has to compulsorily register and there is no threshold limit for this. The registration under GST can be obtained without PAN and by using the existing Tax Deduction and Collection Account Number (TAN) issued under the Income Tax Act. Thus it can be said having TAN is mandatory.

6. When and to whom should the TDS be paid?

TDS shall be paid within 10 days from the end of the month in which tax is deducted. The payment shall be made to the appropriate government which means:

- The Central Government in case of the **IGST and the CGST**
- The State government in case of the SGST

7. What if deductor fails to pay TDS amount to the Government?

If any deductor fails to pay to the Government the amount deducted as tax, he shall pay interest in accordance with the provisions of sub-section (1) of section 50, in addition to the amount of tax deducted.

7. What are the provisions relating to the issue of TDS certificates under the GST law?

As in Income Tax Law, here also the person deducting tax has to issue the TDS certificate in form GSTR-7A to the concerned person within 5 days of depositing the tax to the government. Failure to do so will make the person liable to pay a late fee of Rs. 100 per day up to a maximum of Rs. 5000.

8. Which form is required to file the TDS return?

The person deducting tax is required to file a TDS return in form GSTR-7 within 10 days from the end of the month. When GSTIN of the unregistered supplier is not available, their name can be mentioned. The robustness of the system reflects these filled-in details in the electronic ledger of the supplier.

9. What is the benefit of TDS to the deductee (Supplier)?

As stated above, there will an automatic reflection in the electronic ledger of the deductee (supplier) once the deductor files his/her returns. The deductee can claim credit in his electronic cash ledger of this tax deducted and use it for payments of other taxes.

10. How is Refund of TDS possible under GST?

If any excess amount is deducted and paid to the government, a refund can be claimed as this is not the tax amount that the government has a right on.

However, if the deducted amount is already added to the electronic cash ledger of the deductee, the amount so added cannot be got back as a refund by the deductor. Deductee can claim a refund of tax subject to refund provisions of the act.

SAP: AN INTRODUCTION

CA Jigar Thacker
M.Com.,ACA,DISA(ICAI)

Hello..! Today, let's talk about some technology and how it affects you. Technology has progressed a lot in recent years. But,so what..! Like many other things are progressing, technology has progressed, what's so important in that? Well, it is IMPORTANT as it has changed the way we live in the most unprecedented ways. Have you ever imagined how much time do we spend looking at our mobile or computer screen each day for work or personal use? I bet it would be more than 62% of the time we are awake (i.e. 10 hours out of 16 hours for which we are awake each day).

So, the point behind detailing the above information is that since we are spending such a huge amount of time interacting with different technologies, why not use it wisely? Let's discuss it today keeping in mind our profession and use of technology.

For professionals the key important factor is information. So how to get it? I read the definition somewhere and from my experience, I found the definition correct, it says – "Data in structured (required) form is information". If we think well, the definition holds good in almost all cases. For example, almost all of us might have done physical verification of assets. So, we have quantity, asset name and asset value. We know that location was not getting captured in tally in most of the cases. So now suppose, what would happen if exact location is captured against that same asset and the department to which it belongs. Will it make our work easier? Of course, YES.

So to get the key important factor information, we need to get data. Okay, so how to get the data all in one place so that it can be put into proper perspective and can serve as useful information. From financial records point of view, what we are generally doing in traditional information systems is that, we prepare separate working for the transaction in excel and then pass the entry. Due to this, the key data which is the basis of entry is not available in financial record keeping system, be it tally or any other system. Just imagine what if all the other data which serves as the basis of financial entry is available from the same system that gives us various financial reports. It will certainly add a lot more value seeing the financial data in context of operational data or any other descriptive data. So, we need a system that provides us relevant data as much as possible.

Another aspect has emerged with the evolution of technology is that of system controls. The controls which we were taught during our professional learning are

being implemented through use of technology. If such controls are implemented by some robust system then assurance can be derived by validating the system checks. And to validate the system, it is important to understand the system itself first.

So, as discussed above, we need help of a system that does two things

1. It provides relevant supporting data for financial transactions.
2. It ensures internal control checks which satisfy our concept of audits (e.g. maker-checker, etc.)

I would like to share my experience with one such information system and explain a bit about its workings. I guess we all have heard name of SAP at one or another point of time. So, what exactly SAP is? In a nutshell, it is a relational database management system. To explain you that, I would like to give you example of some its procurement system, which is as follows.

PR (Purchase Request / Requisition) – The starting point of procurement is demand. Users of the organization, who are working on field require many materials and services. It's not that they can directly go out and get them. They have to raise a PR in SAP. In simple words, it is a screen which provides them to enter the details about the things they want to get. Some fields in the screen are,

- Material/ Service Code (e.g. for ball pens there is one code 1000001)
- Material/ Service Description (e.g. ball pen blue, cello)
- Qty
- Space to enter text to justify that request (the need for the material, it's use, etc.)

Now, there is a functionality where a check can be kept that the request must be approved by a certain person (e.g. Head of the department of the person making the request). In that case, the HOD has to approve the PR from a screen in his id and only after he puts an "OK" tick in that screen, that PR becomes a valid request. Also, permutation combinations of releasers can be made according to the value of the PR, say in case the value of PR exceeds 50 lacs, it needs to be approved by CEO.

PO (Purchase Order) : -It is interesting to note that the person who is raising PR and the one who is approving PR cannot contact to the vendor. There is a separate commercial department where there are persons who are attending to valid PRs (PRs approved at all required levels). So, once a PR is released, it will go to the person who has responsibility to procure that item. In huge organizations, there are various purchase groups. So, a PR for keyboard will go to purchase group of computers which will be headed by say Mr. A and it will not go to Mr. B who is handling purchase group of spares for vehicles. It all will be decided automatically by the system since every item has to be mapped with a particular purchase group.

In SAP, system authority is given as per roles. Here, the role of the commercial person attending to the PR is to find a suitable vendor for the item, for which he generally invites quotation and then places the PO to appropriate vendor. So, as per his role, he has the right to decide the rate at which the item / service needs to be procured but he cannot exceed the quantity for which PR is raised. Suppose, Mr. Ram has raised PR for 100 ball pens, so Mr. Shyam who is the commercial guy looking for the procurement can place order of 100 ball pens and not more than that. Mr. Shyam can partly place the order to two vendors, say Vendor A for 60 ball pens and Vendor B for 40 ball pens as per guidelines of his department. Mr. Shyam needs to take care that the specification which are mentioned in PR are met.

SES (Service Entry Sheet – for services) / GRN (Goods Receipt Note- for materials): -So order is placed to vendor as above. Now, when the requested material arrives at location. At that time, the stores person receives the goods and after enters them into system marked for quality check. Once the quality check is completed, entry is made into the system to transfer the material from quality check to available for use and it is showing in inventory in balance sheet. So finally, when Mr. Ram goes to store to get the 2 pens for use out of 100 lying in inventory. The store guy will reduce the inventory and expense will be booked for 2 pens consumed. Here, the store guy will make entry in his screen to issue two pens, the screen will be a normal screen which will be familiar to him and it would not be a screen having debit or credit fields. Entry will be done automatically by SAP as per logic defined.

So, here SAP is one such system which integrates day to day functionality of various departments in different screens and makes appropriate entries in books of accounts. Here each department gets a user-friendly screen in SAP where he captures data necessary for his records and need not worry about it's financial entry. The beauty of the system is that if professional while reviewing the financial entry wants to see some more information, can see directly in SAP. Say for 2 pens issued by Mr. Ram, the finance professional can see the entire chain explained above in SAP and he need not depend on anyone / external excel files for information.

So, let's try to leverage technology in our profession to save time and efforts and get more value addition in our endeavors.

Thank you for reading the article.