


<p>GUJARAT AUTHORITY FOR ADVANCE RULING</p> <p>GOODS AND SERVICES TAX</p> <p>A/5, RAJYA KAR BHAVAN, ASHRAM ROAD,</p> <p>AHMEDABAD – 380 009.</p>	
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ADVANCE RULING NO. GUJ/GAAR/R/2020/08

(IN APPLICATION NO. Advance Ruling/SGST&CGST/2018/AR/39)

Date: 19.05.2020

Name and address of the applicant	:	M/s Nagri Eye Research Foundation. C N Nagri Eye Municipal Hospital, Ellis bridge, Ahmedabad-380006
GSTIN/ User Id of the applicant	:	241800000283ARY
Date of application	:	30.07.2018
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(f) whether applicant is required to be registered; (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.
Date of Personal Hearing	:	12.03.2020
Present for the applicant	:	Shri S. J. Vyas, Advocate

The applicant vide their application for Advance Ruling has submitted that they are a Charitable Trust and are running a medical store where medicines are given at a lower rate and the motive of the trust is not profit; that under GST law, the taxing provision is in Section 9 which levies tax on intra-state supply of goods or service or both and the scope of supply is defined in Section-7 which is reproduced hereunder:

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, 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) Import of services for a consideration whether or not in the course or furtherance of business;
- (c) The activities specified in Schedule I, made or agreed to be made without a consideration; and
- (d) 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.

2. The applicant has submitted that the definition of supply is inclusive definition and is extremely widely worded, however, all forms of supply should be in the course or furtherance of business; that their trust is a Charitable Trust and a person as per Section-2(84) (m) of the Act; that therefore, the liability to GST for sale of medicine is required to be examined to ascertain whether the sale of medicines is in the course of furtherance of business or not. The term 'business' is defined in Section 2(17) which is reproduced below:

- (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.

3. The applicant has stated that business is an inclusive definition; that the Hon'ble Gujarat High Court in the Tax Appeal No.704/2013 in the case of Gujarat v/s Saurashtra Kidney Research Institute had examined a question as the said institute was a dealer within the meaning of Gujarat Sales Tax Act; that the said institute was also a charitable institute, registered as Public Trust engaged in welfare activities for the public at large and providing medical treatment and other facilities; that the hospital also had a store in the premises

from where the medicines were sold and the facts in that case before the Hon'ble High Court of Gujarat was similar to the present case; that the Hon'ble High Court had followed its earlier order in the case of Bhailal Amin General Hospital (Tax Appeal No.1673/2009) wherein it was observed that the activity of purchasing, selling and supplying medicines was to achieve the object of the Trust and was not a business activity; that in their opinion the ratio of the said decision should also apply in the facts of the present case; that the object of the trust is to provide medical facility on cost to cost basis; that the trust is created by the Municipal Corporation and the Municipal Corporation is discharging their obligation of providing medical facility to its citizens; that in view of this, the activity of the Charitable Trust is not a business in any sense of the term; that the inclusive portion of the definition of supply as well as business which has the effect of expanding the scope of this definition also does not cover the charitable trust; that therefore, the sale of medicines by the said Charitable Trust would not attract GST and therefore, the question of registration under the Act does not arise and that under the Gujarat GST Act, the position is comparable and therefore, no liability would arise.

The applicant M/s. Nagri Eye Research Foundation, Ahmedabad have raised following questions for advance ruling:-

1. Whether GST Registration is required for medical store run by Charitable Trust?
2. Whether medical Store providing medicines at a lower rate amounts to supply of goods?

DISCUSSION & FINDINGS

4. We have considered the submissions made by the applicant in their application for advance ruling as well as the arguments/discussions made by their representative during the course of personal hearing. As per their submission, the applicant area charitable trust and are running a medical store where medicines are given at a lower rate and the motive of the trust is not profit. They have quoted a judgement of the Hon'ble Gujarat High Court in the Tax Appeal No.704/2013 in the case of Gujarat v/s Saurashtra Kidney Research Institute which was similar to their case wherein it was observed that the activity of purchasing, selling and supplying medicines was to achieve the object of the Trust and was not a business activity; that therefore, the sale of medicines by the said Charitable Trust would not attract GST and therefore, the question of registration under the Act does not arise and that under the Gujarat GST Act, the position is comparable and therefore, no liability would arise.

5. We have gone through the aforementioned judgement quoted by the applicant which deals with a similar matter. We find that the issue pertains to registration of dealer under Section-2(10) of the Gujarat Sales Act. In the said judgement, the Hon'ble High Court of Gujarat has referred to the exclusion clauses available to charitable trusts under Section 2(10) of the VAT Act and Section-2(10) of the Gujarat Sales Tax Act.

As per the said judgement: **(a)** Explanation-III to Section 2(10) of the VAT Act reads as under: Exceptions:-The following shall not be deemed to be a dealer within the meaning of this clause, namely:-(iii) a charitable, religious or educational institution, carrying on the activity of manufacturing, buying, selling or supplying goods, in performance of its functions, for achieving its avowed objects, which are not in the nature of business.

(b) Explanation-II to Section 2(10) of the Gujarat Sales Tax Act reads as under: "a charitable, religious or educational institution, carrying on the activity of manufacturing, buying, selling or supplying goods, in performance of its functions, for achieving its avowed objects, shall not be deemed to be a dealer within the meaning of this clause. Since there are no such exclusion clauses for similar type of assesses in the CGST Act, 2017 we are of the opinion that the said judgement is not applicable to the present case. However, it is seen that 'trust' has been defined as a person in clause (m) of Sub-section 84 of Section 2 of the CGST Act, 2017. Therefore, the applicant would remain outside the scope of GST registration if and only if the activity carried out by them: **(1)** does not fall under the definition of 'business' as defined in sub-section 17 of Section-2 of the CGST Act, 2017 **or (2)** falls under Schedule-III of the CGST Act, 2017.

6. The applicant has raised the question as to whether there is requirement of registration under GST Act for providing medicines from medical stores at lower rate and whether medicines provided from medical store amounts to supply or not. In this regard, we would like to refer to the following sections of the CGST Act, 2017 which are relevant to the issue in hand.

- (a) sub-section(1) of Section 22 of the CGST Act, 2017 which defines the conditions for registration and reads as under:

“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.”

- (b) sub section 108 of section 2 of CGST Act, 2017 which defines taxable supply and reads as under:

“A **supply of goods** or services or both which is leviable to tax under this Act;”

- (c) clause (a) of sub section (1) of section 7 of CGST Act,2017 which defines **Scope of supply**” and reads as under:

“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;”

- (d) Sub section 52 of section 2 of CGST Act, 2017 defines **Goods** and reads as under:

“goods” means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;

- (e) sub section 31 of Section 2 of CGST Act, 2017 which defines **Consideration** and reads as under:

(a) Any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) The monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

- (f) sub section 84 of section 2 of CGST Act, 2017 defines “**person**” and reads as under:

“Person” includes—

(a) An individual;

(b) A Hindu Undivided Family;

(c) A company;

(d) A firm;

(e) A Limited Liability Partnership;

(f) An association of persons or a body of individuals, whether incorporated or not, in India or outside India;

- (g) Any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of The Companies Act, 2013;
- (h) Anybody corporate incorporated by or under the laws of a country outside India;
- (i) A co-operative society registered under any law relating to co-operative societies;
- (j) A local authority;
- (k) Central Government or a State Government;
- (l) Society as defined under the Societies Registration Act, 1860;
- (m) Trust; and
- (n) Every artificial juridical person, not falling within any of the above;

(g) Sub section 17 of section 2 of CGST Act defines “**business**” and reads as under:

- (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.

7. The applicant is a charitable trust which appears under the definition of ‘person’ and falls at clause(m) of sub-section 84 of Section 2 of the CGST Act, 2017. As per definition, a charitable trust is a person as per clause (m) of sub section 84 of section 2 of CGST Act, 2017. The applicant is providing medicines from its medical store at lower rate, so activity of dealer is to provide medicines with less pecuniary benefit. As per the definition of ‘business’ any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit is termed as business. Hence, it is clear that any trade carried out whether for pecuniary benefit or not is a business as per CGST Act, 2017. Therefore, the applicant is carrying out business activity as per CGST Act, 2017.

8. Applicant is selling medicines from its medical store. Medicine is goods as per sub-section 52 of Section 2 of the CGST Act, 2017. Medicine is a taxable supply as per sub section 108 of section 2 of CGST Act, 2017 and GST is leviable on medicine as per Chapter-30 of HSN code. Therefore, sale of medicine by the applicant is a taxable supply of goods. Applicant is providing medicines from its medical store at lower rate so price paid by the customers is consideration for the applicant as defined in sub-section 31 of Section 2 of the CGST Act, 2017. Further, the activity of supply of goods by the applicant does not fall under the list appearing in Schedule-III of the CGST Act, 2017. Therefore, we conclude that the applicant is making taxable supply from its medical store, so as and when aggregate turnover (here medicine) of applicant exceeds threshold limit as specified in sub-section(1) of Section 22 of

the CGST Act, 2017, the applicant has to obtain registration under the relevant provisions of the CGST Act, 2017.

9. In view of the foregoing, we rule as under –

R U L I N G

1. The applicant is required to obtain GST Registration for medical store run by Charitable Trust as per the relevant provisions of the GST Act, 2017.
2. The Medical Store providing medicines at a lower rate amounts to supply of goods as per the relevant provisions of the GST Act, 2017.

(SANJAY SAXENA)

(MOHIT AGRAWAL)

MEMBER

MEMBER

Place: Ahmedabad

Date: 19.05.2020.