

Service Tax on Charitable and Religious Trusts



The Mega Exemption Notification No. 25/2012 dated 20th June 2012 exempts from whole of service tax services provided by charitable trusts registered under Section 12AA of the Income-tax Act, 1961 by way of charitable activities. But a broad analysis of this notification and all other service tax provisions reveals that all services provided by such charitable trusts are not exempt. There are many services that are provided by charitable trusts that are still taxable. The author in this article analyses the ambit of services provided by charitable and religious trusts and she goes on to determine the taxability factor of those services vis-à-vis the provisions of Service Tax in this interesting analysis. Read on...

On a plain reading of services tax provisions relating to charitable trust, it may be concluded that services provided by charitable and religious trusts are exempt. After the drastic change related to service tax provisions after 1st July 2012, it is clear that all services provided by charitable and religious trusts are not exempt. In-depth analysis of service tax provisions related to charitable trust proves that many services provided by charitable and religious trusts are liable to the service tax. Mega Exemption Notification no. 25/2012 has made exemption from service tax to charitable and religious trust more specific and even more restrictive. Therefore, it will be interesting to note and analyse the services provided by charitable

and religious trusts and ascertain their taxability as per the service tax provisions.

Entry No. 4 of Mega Exemption Notification No. 25/2012 dated 20th June 2012 specifies that *services by an entity registered under Section 12AA of Income-tax Act, 1961 by way of charitable activities* are exempt from whole of the service tax. Thus as per this notification, restrictive exemption is given to the charitable trusts. If charitable trusts satisfy the following two conditions, services provided by them are exempt:

- I. Charitable trusts must be registered under Section 12AA of the Income-tax Act, and
- II. Activities carried out by charitable trusts should be charitable.

Meaning of Charitable Activities

According to the notification, *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,*



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¹ Substituted for "Income- tax" by the Direct Tax Laws (Amendment) Act, 1987, w. e. f. 1- 4- 1988.

- (ii) persons afflicted with HIV or AIDS, or
- (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;
- (2) Advancement of religion or spirituality;
- (3) Advancement of educational programs or skill development relating to –
 - (a) abandoned, orphaned or homeless children;
 - (b) Physically or mentally abused and traumatised 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; or,
- (5) Advancement of any other object of general public utility up to a value of –
 - (a) eighteen lakh and seventy five thousand rupees for the year 2012-13 subject to the condition that total value of such activities had not exceeded twenty five lakh rupees during 2011-12;
 - (b) twenty five lakh rupees in any other financial year subject to the condition that total value of such activities had not exceeded twenty five lakh rupees during the preceding financial year.

Prior to 1st March 2013, in addition to the above listed activities, charitable trusts enjoyed exemptions for charitable activities related to *advancement of any other object of general public utility* also. But *vide* Notification No. 3/2013 dated 1st March 2013, this exemption was withdrawn and maximum exemption for the amount paid in respect of advancement of any other object of general public utility was set to ₹10 lakh as available to other small service providers. As per the Notification No. 25/2012, *general public* means *the body of people at large sufficiently defined by some common quality of public or impersonal nature*. This definition has made the exemption to charitable trusts available for charitable activities more specific. While the income from only those activities listed above is exempt from the service tax, that from the rest is taxable. So, a broad analysis of the above definition shows that there are many services provided by charitable and religious trust which are not considered as *charitable activities* and hence, such services come under the service tax net. Some of such services are:

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Renting of immovable property and conduct of religious ceremony by charitable or religious trusts:

Entry no. 5 of Notification No. 25/2012 exempts the services by a person by way of (a) renting of precincts of a religious place meant for general public, or (b) conduct of any religious ceremony. Meaning of religious place as per above notification is *religious place 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 cathedral, church, temple, college, etc.* So if immovable properties owned by charitable trusts 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 service tax. 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 service tax. Some experts are of the view that temporary accommodation to pilgrims at rest houses governed by charitable trust should not be liable to service tax, as this is not renting of commercial place, but it is a temporary facility of letting out of rest houses near religious place owned by charitable and religious trust and which are made available only to pilgrims who have visited the religious place. There is no commercial intention of earning income behind such letting out, but the only intention here is to facilitate pilgrims for their visit to the religious place. But this is always a matter of litigation. If charitable trusts rent out their offices or shops to the Government or the Governmental authority, rental income thus produced is also chargeable to service tax.

Income from religious ceremony organised 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 authorised for this purpose by the charitable or religious trust are exempt from service tax. But a broad analysis of this exemption shows that all income from such a religious ceremony is not exempt. The nature of income is an essential factor in these circumstances. If income loses its religious nature, it is definitely chargeable to service tax. For example, if with regard to *Navratri* or other religious functions, charitable trusts rent out their space to agencies for advertisement hoardings, income from such advertisement is chargeable to the service tax, as this will be considered as income from the advertisement services. Here some experts are of view that this will be considered under negative list under exemption for *selling of space or time slots for advertisement other than advertisements broadcast by radio or television services*. But it is a matter of litigation also. Then, if donation for religious ceremony is received with specific instructions to advertise the name of a donor, such donation income will amount to the service tax. But if donation for religious ceremony is received without such instructions, it will not be chargeable to service tax.

Services provided by way of construction of religious place: Entry No. 13(c) of Notification No. 25/2012 exempts this service by specifying that *services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of a building owned by an entity registered under Section 12AA of the Income-tax Act, 1961 and meant predominantly for religious use by general public*. Thus, if charitable trusts give works contract for construction of temple, hospital, school, etc., service tax on such works contract is exempt. But essential condition for claiming this exemption is that it must be used for general public or for religious purpose. If it is used for commercial purpose, it is not exempt

If trusts are running schools, colleges or any other educational institutions specifically for abandoned, orphans, homeless children, physically or mentally abused persons, prisoners or persons over age of 65 years or above residing in a rural area, activities will be considered *charitable* and income from such services will be wholly exempt from the service tax

from service tax. So if charitable trust constructs offices to give them on rent, service tax is applicable on such works contract.

Service tax on management of educational institutions by charitable trusts: If trusts are running schools, colleges or any other educational institutions specifically for abandoned, orphans, homeless children, physically or mentally abused persons, prisoners or persons over age of 65 years or above residing in a rural area, activities will be considered as *charitable* and income from such services will be wholly exempt from the service tax. Meaning of the word *rural area* defined in said notification is *rural area means the area comprised in a village as defined in land revenue records excluding the area under any municipal committee, municipal corporation, town area committee, cantonment board or notified area committee or any area that may be notified as an urban area by the Central Government or a State Government*. Also as per the entry no. 34(b) of above notification, if charitable trusts registered under Section 12AA of Income-tax Act providing educational services receive any service from provider of services located in non-taxable territory, such services received are not chargeable to service tax under the reverse charge mechanism.

If the trust is running school for the purpose which is not covered above, income from such activity will not be exempt under entry no. 4 of Mega Exemption Notification, but will be exempt under Clause (12) of the negative list. If trust having boarding school, taxability of such service will be determined as per principles laid down under Section 66F of the Act. Moreover, if such school or other educational institution gives property owned by such institution on rent to others, no exemption will be available for such services.

Moreover, if educational institutions managed by charitable trusts provide service by way of renting of any immovable property, that will be chargeable to the service tax. Now, the exemption provided to educational institutions in respect of renting of immovable property by them is withdrawn *vide* Notification No. 3/2013 dated 1st March 2013 applicable from 1st April 2013 due to removal of the phrase *provided by educational institution* from entry no. 9 of Mega Exemption Notification.

After the amendment made by the Finance Act, 2014 *vide* Notification No. 6/2014-ST dated 11th July 2014, exemption for services provided by way

of renting of immovable property to *educational institution* is withdrawn. So after 11th July 2014, renting of immovable property *to and by* educational institutions managed by charitable trusts-both are chargeable to service tax.

Also the concept of *auxiliary educational services* is withdrawn *vide* Notification No. 6/2014-ST and now only following services received by eligible educational institution are exempt:

- (1) Transportation of students, faculty and staff of the eligible educational institution.
- (2) Catering service including any mid-day meals scheme sponsored by the Government.
- (3) Security or cleaning or house-keeping services in such educational institution.
- (4) Services relating to admission to such institution or conduct of examination.

So after the amendment made *vide* the Finance Act, 2014, all services received by educational institutions managed by charitable trusts except those services mentioned above are taxable.

Service tax on arranging yoga and meditation camp by charitable trusts: Charitable trusts organise yoga camps or other fitness camps and they generally are not free for participants, as trusts charge some amount from the participants in the name of accommodation or participation. If trusts are arranging residential or non-residential yoga camps by receiving donation or other charges from the participants, these will not be considered charitable activities. As donation is received for participation, it will be considered commercial activity and it will definitely be covered under the service tax net. Similarly, if charitable trusts organise fitness camps in reiki, aerobics, *etc.*, and receive donation from participants, such income that comes under health and fitness services will also be taxable. Recently, the service tax department had served a notice of demand for a big amount to a well-known charitable trust for not depositing service tax on service of arranging yoga camp organised across the country.

Service tax on running of public libraries by charitable trusts: No service tax will be applicable if charitable trusts are running public libraries and lend books, other publications or knowledge-enhancing content/material from their libraries. This activity is specifically excluded by way of entry No. 35 of Notification No. 25/2012, which means services of

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private libraries are not exempt. But the question is whether libraries run by charitable trusts that lend books only to members of libraries and charge subscription or membership fees will be called *public library*. It is essential to find out the meaning of *public library*. The meaning of *public library* has not been defined anywhere in the Act. But as per the old definition of *public library* issued by UNESCO, maintenance of public library should be out of public funds and it must provide free services to all. If this definition is accepted, most of the libraries managed by charitable trusts serving the public will be considered *private*, since some nominal amount is charged from members and readers in the name of subscription or other services. But as per the modern definition of *Public Library* approved by UNESCO and IFLA, *public libraries are those libraries which serve the population of a community or region free of charge or for nominal fees*. Thus, if donors of public library remain open to all and if it caters to educational, informational and recreational needs of its users and finance for such libraries can be provided from donation, subscription, from special fund created for this purpose or from combination of all such sources, it will be called public library and no service tax will be applicable on such services.

Service tax on hospital managed by charitable trusts: Mega Exemption Notification No. 25/2012 exempts healthcare services at clinical establishment, an authorised medical professional or paramedics. All treatment or diagnosis or care for illness, injury, deformity, abnormality or pregnancy by a clinical establishment is covered. Such services provided by doctors and paramedics either provided as an employee or in their individual capacity is exempt. Transportation of patients to and from a clinical establishment is also exempt. The *clinical establishment* means any hospital, nursing home, clinic, sanatorium or private diagnostic centre like x-ray clinic, pathological laboratory or any diagnostic

or investigation centre. So, if charitable trusts run a hospital and appoint specialist doctors, nurses and provide medical services to patients at a concessional rate, such services are not liable to service tax. If hospitals hire visiting doctors/specialists and these deduct some money from consultation/visit fees payable to doctors and the agreement between hospital and consultant doctors is such that some money is charged for providing services to doctors, there may be service tax on such amount deducted from fees paid to doctors. But if the agreement is such where amount of fee payable to doctors is fixed and no money is deducted from fees, no service tax will be applicable.

Service tax on services provided to charitable trusts:

Services provided to charitable trusts are not out of ambit of service tax. In fact, charitable trusts are liable to service tax under reverse charge mechanism also. Only under partial reverse charge mechanism (Proportional/Joint), charitable trust is not required to pay service tax. Three services are covered under

partial reverse charge *i.e.*, renting of motor vehicle to carry passengers, Manpower supply and security services and Works contract service. For these three services, reverse charge is applicable only when service receiver is business entity registered as body corporate and service provider is individual, Hindu undivided family (HUF), firm (including LLP) and association of persons (AOP). Meaning of *business entity* given under the Act is, *business entity means any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession*. So, charitable trusts cannot be considered as *business entity* for these three services. Also as per the Act, *Body Corporate* includes company, corporation and LLP, but does not include trusts. So, reverse charge is not applicable to charitable trust for these three specified services in both cases, where charitable trust is service provider or service receiver. For other services, reverse charge is applicable to charitable trust subject to conditions specified for taxability of respective services. ■



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