

Exemption for Charitable Organisations— Interplay of Income Tax and GST



Charitable organisations have been given exemption in respect of their income under Section 11 to 13 of the Income-tax Act and in respect of services provided by them by way of charitable activities, exemption has been provided through exemption notifications under CGST and IGST. While GST exemption requires registration under Section 12AA of the Income-tax Act as a necessary condition, creating thereby a link between two laws, the definitions of charitable purposes in the Income-tax Act and charitable activities in GST notifications do not necessarily cover the same ground. A combined analysis of provisions in both the laws is necessary to appreciate nuances of exemption for charitable organisations in both the laws. Read on...



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Income-tax Act and GST law both provide for exemption in respect of charitable organisations. In Income-tax Act, this exemption is enshrined in Section 11 to Section 13 of the act. In GST, exemption is provided for by twin notifications no. 12/2017 – Central Tax (Rate) and 9/2017-Integrated Tax (Rate), both dated 28-06-2017 (hereinafter referred to as “GST exemption notification”).

Income-tax Act provides for complete exemption to the income of a charitable organization subject

to fulfilment of certain conditions. In GST, apart from specific exemptions in respect of health services, educational activities and religious activities, there is a general exemption in respect of “services by an entity registered under Section 12AA of the Income-tax Act, 1961 by way of charitable activities” (entry 1 of GST notification).

A combined analysis of exemption mechanism in both the laws brings out various interesting points ranging from interdependencies of GST exemption on Income-tax Act, impact of losing exemption in Income-tax on GST and scope of charitable purposes/activities in both the laws.

GST: What is a Charitable Organisation?

GST law does not have its own mechanism to identify any organisation as charitable organisation. Entry no. 1 of GST exemption notification, providing exemption for services by way of charitable activities, refers to “an entity registered under Section 12AA of the Income-tax Act, 1961”, meaning thereby that registration under Section 12AA of the Income-tax Act is necessary for exemption not only from Income-tax but also for GST.

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In fact, for exemption from Income tax, apart from registration under Section 12AA, there are certain other conditions also like utilization of minimum 85% of income for charitable purposes, investment of funds in prescribed mode only, non-utilisation of income/asset for trustees/ their relatives etc. The only condition for GST exemption is “registration under Section 12AA of Income-tax Act.” Thus it is well possible that income of a charitable organisation may become fully/partially taxable under Income-tax Act due to violation of certain conditions of Sec. 11 to 13 but still if it is registered under Section 12AA, its GST exemption shall remain intact.

It is important to note that for the purpose of Income tax Act, there are educational organisations and hospitals which are registered/ approved under Section 10(23C)(vi)/(via) of the Income-tax Act and enjoy exemptions on more or less same lines as organisations registered under Section 12AA. However GST exemption notification is referring to only registration under Section 12AA and not under Section 10(23C) (vi)/ (via). This is probably so as for educational activities and health services, there are separate entries in GST exemption notification hence there exemption shall not be governed by GST exemption for other charitable organisations.

Organisations registered prior to 01/04/97

Section 12AA had been inserted in Income-tax Act w.e.f. 01/04/1997. Prior to this, the registration of charitable organisations was under Section 12A. As the GST exemption notification is specifically referring only to Section 12AA of Income-tax Act, older organisations registered under Section 12A may face a problem on GST front, especially since GST enforcement machinery is not supposed to be well aware of nitty-gritty of Income-tax Act.

GST: Effective date of exemption

In Income tax, the basis of taxation being yearly income, taxability gets determined based on provisions applicable for previous year/assessment year. GST on the other hand, applies to particular transaction and as such operates with reference to date of transaction. This inherent difference in nature of both the taxes may be a source of problem in the 1st year of exemption under Income-tax Act.

By virtue of Section 11(2) of the Income-tax Act, the exemption of Income-tax Act gets applicable from the financial year in which application for registration under Section 12AA has been made. For example, if application for registration has been made on 01/12/2018 and registration has been granted on 01/05/2019, Income tax exemption shall be available for Previous Year 2018-19. However, in GST it needs to be considered, whether exemption in this case shall be available w.e.f.

- 01/04/2018 i.e. date from which Income tax exemption got effective, or
- 01/12/2018 i.e. the date of application for registration, or
- 01/05/2019 i.e. the date of actual registration under Section 12AA.

As the GST exemption notification uses the word “registered”, the argument would be “actual date of registration” (which is 01/05/2019 in above example) vs. “effective date of registration” (which is 01/04/2018 in above example). Considering the fact that GST law operates with reference to situation existing as on the date of “time of supply”, the balance of argument shall tilt in favour of granting GST exemption from the date of actual registration under Section 12AA and not the date of effective registration for Income tax purposes. This being so, it would be an interesting situation where organisation would be charitable organisation for income tax purposes for one year but shall not be charitable organisation for GST purposes for the same year.

Cancellation of Exemption under Section 12AA: Impact on GST

Through Section 12AA (3) of the Income-tax Act, Pr. C.I.T./C.I.T. has been vested with the power to cancel the registration of a charitable organisation. Such cancellation is typically ordered when a reference is made by assessing officer during the course of assessment and operates for income of whole of the year under assessment. In such case, what shall be the fate of GST exemption which must have been already availed of by the organisation for that year? Whether cancellation of income tax registration and thereby loss of exemption there shall operate retrospectively in GST to cancel exemption already availed?

If we go by the discussion in earlier paragraph that GST operates with reference to situation exist as on the date of “time of supply”, it can be argued that event of cancellation of registration being posterior to time of supply for GST, it cannot affect exemption already got created as on time of supply. If this argument is accepted, it would be another peculiar situation where a charitable organisation would become liable for Income tax but still would have enjoyed GST exemption.

In fact, after introduction of negative list concept in Service Tax, these issues have started cropping up there also, and one was hoping that GST, being a well thought out law, shall resolve them. Unfortunately, GST has failed to throw any further light in these matters and as such, all these issues shall be craving for a clarification as the GST law settles down.

Charitable Purposes vs. Charitable Activities

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Thus while Income tax is focusing on “charitable purposes”, focus of GST is “charitable activities”. One may tend to think that operating area of both the terms is same; an analysis of definition of these terms in respective laws gives quite a different picture.

Charitable Purposes - Section 2(15) of the Income-tax Act

As per Section 2(15) of the Income-tax Act, charitable purpose includes following 6 activities:

1. relief of the poor,
2. education,
3. yoga,
4. medical relief,
5. preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and
6. the advancement of any other object of general public utility.

Charitable Activities – GST Exemption Notification

On the other hand, GST Exemption Notification in para 2 (r) defines “charitable activities” to mean activities relating to -

- public health by way of ,-
 - (A) care or counselling 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;
- advancement of religion , spirituality or yoga
- 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;
- preservation of environment including watershed, forests and wildlife.

Difference in Coverage

It can be observed that there is a vast difference in the coverage of charitable activities as obtained in Income-tax Act and as defined in GST exemption notification.

The most notable difference is with respect to activities in the nature of advancement of any other object of general public utility, which is a charitable purpose for Income tax but the reference to which is conspicuous by its absence in GST definition. Thus for example, an NGO which is engaged in activities of promoting literature and develop book reading habits amongst general public and keep on arranging various lectures, seminars, book reading activities for this purpose, may be able to claim its activities as charitable for Income tax purposes but for GST purposes, these activities shall not be treated as charitable.

Any activity where the purpose is “relief of poor” is a charitable activity for Income tax. For example- running of crèches, day care centres, *aanganwadis* in a slum area is a charitable activity for Income tax as it is meant for relief of poor. However, GST definition of charitable activity does not recognise “relief of poor” *per se* as a charitable activity. Thus any activity, where the object is to provide relief to poor section of the society, shall not on its own get exemption from GST on the ground of charitable activity unless it gets covered under any other specific clause of exemption.

For income tax, education and medical relief are charitable purposes, generically. GST definition is recognising them as charitable activity only in some specific cases as mentioned in clause (i) and clause (iii) of definition. However, there is some specific, separate exemption in GST for education and healthcare services. So GST exemption for education and medical nature organisation shall mainly get decided not in the capacity of charitable organisation but by virtue of and in accordance with specific exemptions given to their activities in GST notification.

For Income tax purposes, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest both are charitable purposes. GST definition of charitable activities restricts itself to only preservation of environment including watershed, forests and wildlife. Thus an organisation, engaged in preservation and maintenance of some archaeological site may claim its activities as charitable for income tax but not for GST purposes.

It is interesting to observe that for the purposes of recognising an entity as charitable organisation, GST notification leans on registration under Section 12AA of Income-tax Act but then goes on to define charitable activities in its own manner. The GST

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concept of charitable activity is quite restrictive as compared to Income tax and is full of various undefined, open ended terms like “abandoned children”, “mentally abused and traumatized persons” and like. Thus all entities engaged in charity work, would be well advised to critically examine nature of their activities for GST purposes. Due to disjoint in nature of charitable activities between Income tax and GST, it is well possible that though they may be enjoying exemption under Income tax but may still get caught into the GST net. ■