



Department of Science & Technology  
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# ***EMERGING TRENDS IN MANAGEMENT AND INFORMATION TECHNOLOGY***

**(KSCON 2020)**

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14. Blurring the lines between financial services and technology: A study on adoption behavior of Fin-Tech in Ahmedabad — *Akshat Shah, Kirtan Mehta* 154
15. Secondary Analysis of Factors affecting Individual's Retirement Planning Behaviour — *Viddhi Kotak, Dr. Anjali Gokhru* 164
16. Gender Gap in Financial Literacy: Evidence from Ahmedabad — *Senorita Dias, Karan Singhal* 171
17. To Study the Awareness and Level of Satisfaction of Working Age Population towards Retirement Planning — *Ms. Ria Sharma, Prof. Pooja M Shah* 186
18. Supply Chain Finance — *Naman Jain, Ansari Mohammed Musaiif, Jeetendra Khemani* 198
19. A Study on the Performance of Mutual Funds with special reference to equity large cap and mid cap & Small cap mutual funds — *Sneha Parmar* 205
20. Digitalization of financial services & cyber threats — *Meha Rakeshbhai Jani, Manali Manishkumar Soni* 213
21. A Study on Investors Preference towards Online and Offline Trading in Stock Market with Respect to Ahmedabad City — *Katiyar Rahul Sanjeevbhai, Niraj Gurprakash Plaha* 223
22. Digitalization: Reality or myth — *Dr. Urvil Amin, Prerna Kalvinkar* 233
23. Awareness and Understanding towards Goods and Services Tax of Retailers in Gujarat With Reference to Rajkot District — *Parmarrashmi Khodabhai* 249
24. A Paper On Goods And Services Tax With Reference To Charitable And Religious Trusts In India — *Dr. Hiral Parikh* 258
25. An Overview of Initiatives and Achievements of Economic Development through Financial Inclusion in India — *Vaishali M. Nindroda* 267
25. A Study on Consumer Behaviour Towards Zomato and Swiggy and Restaurants — *Siddharth Jain* 282
26. People's Preference and Satisfaction Towards Various Places in Ahmedabad — *Zainab Boxwala, Harsh Rathod, Jay Raval* 289
27. Cross Buying and up buying behaviour in Retailing-Divers and Consequences with moderating effect of Psychological factors on Customer Retention Strategies — *Abhigna Vaishnav* 310
28. Study of Consumer Satisfaction towards Shopping Mall in Ahmedabad — *Pratima R Rathod, Dr. Anjali Gokharu* 321
29. A Study on Comparative Analysis of Social Media Marketing Scenario in Different Eras of Internet Usage in India — *Mr. Jaygiri A. Goswami, Dr. Rachna Gandhi* 333
30. Internet of Things (IoT): Revolutionary Concept in Modern Marketing — *Mr. Sagar Burse* 346

## A PAPER ON GOODS AND SERVICES TAX WITH REFERENCE TO CHARITABLE AND RELIGIOUS TRUSTS IN INDIA

— Dr. Hiral Parikh

### ABSTRACT :

GST (Goods and Services tax) is a landmark reform in our country; it is advantageous for various sectors including charitable and religious trust. At first glance it infers that charitable trust and religious trust are outside the purview of GST and that it is creating a sense of delusion amongst the assessee. In reality the GST is applicable on all goods sold by charitable trust where there is a supply of goods to them and all services which are not free of cost comes under the implications of GST. This paper is an analytical study of what constitutes the charitable and religious trust, what are the Implication of GST on goods and services provided by charitable and religious trusts. When and on what the exemption can be claimed for various good and services.

**Keywords:** Charitable and religious trust, GST, exemption, supply of goods

### INTRODUCTION :

GST is applicable to whole of India. GST (Goods and services tax) is applicable to goods as well as services. It is classified into CGST, SGST, IGST and UTGST. The former Finance Minister of India Late Mr. Arun Jaitley wanted to keep the GST rates close to original VAT rates. But there were differences in case of some items because of changes in the economy as well as customer's preferences and utilities. It is observed that goods and services tax is applicable to business entities engaged in industry, commerce and trading units. Goods that are sold and services that are offered by a charitable trust is taxable in certain cases. The charitable trust must pay the GST rate applicable while purchasing the supply as well as for providing the services. GST rates applicable for goods as well as services are categorized as follows:



The goods are broadly categorized as follows:

PRODUCTS	APPLICABLE TAX RATES
Gold and precious metal	3%
Household necessities such as edible oil, sugar, spices, tea, and coffee (except instant) are included. Coal, Mishti/Mithai (Indian Sweets) and life-saving drugs are also covered under this GST slab	5%
This includes computers and processed food	12%
Hair oil, toothpaste and soaps, capital goods and industrial intermediaries are covered in this slab	18%
Luxury items such as small cars, consumer durables like AC and Refrigerators, premium cars, cigarettes and aerated drinks, High-end motorcycles are included here.	28%

Source: <https://cbic-gst.gov.in/gst-goods-services-rates.html>

The services are broadly categories as follows:

SERVICES	APPLICABLE TAX RATES
Railways-Transportation of goods, passengers, Goods transported in a vessel from outside India, Renting a motor cab without fuel cost, Transport services in AC contract/stage or radio taxi, Transport by air (scheduled)/air travel for purpose of pilgrimage via chartered/non-scheduled flights, Tour operator services, Leasing of aircrafts, Print media ad space, Working for printing of newspapers	5%
Rail transportation of goods in containers from a third party other than Indian Railways, Air travel excluding economy, Food /drinks at restaurants without AC/heating or liquor license, Renting of accommodation for more than Rs.1000 and less than Rs.2500 per day, Chit fund services by foremen, Construction of building for the purpose of sale, IP rights on a temporary basis, Movie Tickets less than or equal to Rs. 100	12%
Food/drinks at restaurants with liquor license, Food /drinks at restaurants with AC/heating, Outdoor catering, Renting for accommodation for more than Rs.2500 but less than Rs.5000 per day, Supply of food, shamiyana, and party arrangement or Circus, Indian classical, folk, theatre, drama, Supply of works contract, Movie Tickets over Rs. 100	18%
Entertainment events-amusement facility, water parks, theme parks, joy rides, merry-go-round, race course, go-carting, casinos, ballet, sporting events like IPL, Race club services, Gambling, Food/drinks at AC 5-star hotels, Accommodation in 5-star hotels or above	28%

Source: <https://cbic-gst.gov.in/gst-goods-services-rates.html>



## OBJECTIVES OF THE STUDY

Charitable and religious trust are non – profit making organizations. Their activities focus on providing goods and services to people at large at a reasonable and rate without the motive of earnings profits out of it. Under taxation laws the charitable and religious trust is very well defined.

- 1) To understand what is charitable and religious trust and its registration process under GST Act 2017.
- 2) To Study the applicability and exemptions available to various charitable and religious trust activities under GST ACT 2017.

## WHAT IS CHARITABLE OR RELIGIOUS TRUST?

The term Charitable or religious trust is explained under Income Tax Act 1961. As per notification no. 12/2017 – Central Tax (Rate) dated 28/06/2017, Sr. no. 1 exempts services provided by an entity registered under section 12AA of Income tax Act, 1961. by the way of charitable activities.

*“The word ‘Charity’ connotes altruism in thought and action. It involves an idea of benefiting others rather than oneself”* Supreme Court in the case *Andhra Chamber of Commerce [1965] 55 TR 722 (SC)*.

Charity is a voluntary help either in money or kind to the needy. Collective efforts are always more fruitful. Hence, there are various Non-Governmental Organizations (NGOs) and non-profit entities constantly working on charitable activities by raising funds all over the world by forming either an institution or trust. Section 80G of Income tax Act 1961 gives the list of approved charitable institutions.

## IS GST REGISTRATION COMPULSORY OF CHARITABLE AND RELIGIOUS TRUST?

Section 12A of Income tax Act deals with registration of trust and 12 AA deals with procedure of registration of trust. Trust here includes trust, society and section 8 companies to claim exemption from Income tax. Their main motive is to benefit the members and do charitable activities. The application for registration is to be made to the commissioner of Income tax along with form 10A, evidence of establishment of trust, trust deed, MOA and AOA in case of section 8 companies, past 3 years statement of accounts, PAN of trust. All these documents must be signed by authorized signatories and submitted as per the rule of 17A of Income tax Act, 1961. After verifying the documents and satisfied with its genuineness will allow exemption under Income tax Act, 1961.

## THRESHOLD LIMIT FOR REGISTRATION

If Charitable or religious trust is registered under section 12 AA of Income tax Act, 1961 then they are eligible trust under GST Act 2017.

- 1) Section 22 of CGST Act 2017 laid down the turnover limits for goods and services i.e. Rs. 20 Lakhs excluding special category states. In following cases Charitable or religious trust requires Registration

If the charitable and religious trust has partly exempted turnover and partly taxable turnover totaling to Rs. 20 Lakhs

When Charitable and religious trust requires to pay GST under Reverse Charge Mechanism

If Charitable and religious trust is making inter - state supply.

If Charitable and religious trust is making an occasional taxable supply in the state where it does not have fixed places of business.

If Charitable and religious trust is involved in the supply of goods through E-Commerce who required to collect tax at source.

## BOOKS OF ACCOUNTS TO BE MAINTAINED BY CHARITABLE OR RELIGIOUS TRUSTS

As per section 35(1) of CGST Act, 2017 the books of accounts shall be maintained by Charitable trust has been registered under GST. The following details shall be maintained in the books of accounts as per section 35(1)

- 1) Statement of Production or manufacture of goods
- 2) Inward or outward register of supply of goods or services
- 3) Register of Stock of goods
- 4) Input tax credit availed document
- 5) Output tax payable and paid document
- 6) And any other particular which may be prescribed by the assessing officer

## WHAT ARE CHARITABLE ACTIVITIES UNDER GST?

Charitable Trusts can be classified mainly into 7 categories as far as GST is concerned.

- I. Trusts carrying Charitable Activities
- II. Trusts carrying Educational Activities
- III. Trusts carrying Religious Activities
- IV. Trusts carrying hospital activities
- V. Trust carrying on Rental Activities
- VI. Trust carrying on Agricultural Activities
- VII. Trusts carrying combination of the above activities

## TRUSTS CARRYING CHARITABLE ACTIVITIES

Services by an entity registered u/s 12A/12AA of the Income Tax Act by way of charitable activities. It means activities relating to :

- 1) **Public Health services:** It covers care or counselling of terminally ill persons or persons with severe physical or mental disability, persons afflicted with HIV or AIDS, persons addicted to a dependence-forming substance such as narcotics drugs or alcohol or Public awareness of preventive health, family planning or prevention of HIV infection,



- 2) **Promoting of religion, spirituality, or yoga :** Advancement of religion, spirituality, yoga, Spreading public awareness on health, family planning are services under GST.
- 3) **Promoting educational programs or skill development:** Charitable activities such as advancement of educational programs or skill development relating to abandoned, orphaned or homeless children, physically or mentally abused and traumatized persons, prisoners and persons over the age of 65 years residing in rural area does not attract GST.
- 4) **Trainings and Programs:** If a charitable or religious trust is conducting training programs, yoga camps, or other programs that are not free for participants, it will be considered a commercial activity and hence will be liable for GST.
- 5) Even the donation received for such an activity will be liable for taxation under GST.
- 6) **Charitable services to preserve the environment (watershed areas, forests, and wildlife)**

#### **Trusts carrying Educational Activities :**

- 1) Services provided by an educational institution to its students, faculty and staff is exempt from GST.
- 2) Educational institution means an institution providing services by way of pre-school education and education up to higher secondary school or equivalent to it.
- 3) Education as a part of curriculum for obtaining qualification recognized by any law for the time being in force, education as a part of an approved vocational education courses.
- 4) It is clear that only the services provided to its students, faculty and staff is exempt from GST. If these educational institutions provide any other services to outsiders then they are taxable under GST.
- 5) It depends on the nature of service. Certain services rendered to the educational institutions like a Pre-school education and education up to higher secondary school or equivalent are exempt from GST.
- 6) Services such as transportation of students, faculty and staff, catering, including mid-day meals scheme sponsored by the Central Government, State Government or Union territory.
- 7) Security or cleaning or housekeeping services performed in such educational institutions, services relating to admission to, or conduct of examination by such institution, up to higher secondary.
- 8) If the above said services are rendered to professional colleges, Degree Colleges, Post Graduate colleges in unrecognized private universities then they are taxable under GST.

#### **TRUSTS CARRYING RELIGIOUS ACTIVITIES**

- 1) **Income by way of conducting a religious ceremony, renting of a religious place meant for general public where the rent of the room is less than Rs. 1,000/- per day, the rent of premises is exempt from GST.**



Community hall kalyanamandapam or open area which is charged less than Rs. 10,000/- per day and the rent of shops or other spaces for business or commerce which is charged less than Rs. 10,000/- per month is exempt from GST.

Religious societies may take shelter under this provision, if there is no other taxable supply.

Thus, income from a religious ceremony like Christmas or Navratri functions and religious events/poojas conducted on special occasions like religious festivals is exempt from GST.

However, renting out space during Ganesh festival or other religious functions to agencies for advertisement hoardings to promote their business or donations received for a religious ceremony with instruction to advertise the name of the donor, such income is chargeable under GST.

### **TRUSTS CARRYING HOSPITAL ACTIVITIES**

Health care services by a clinical establishment, an authorized medical practitioner or para-medics and services provided by way of transportation of patient in an ambulance are GST exempt.

Providing care or counselling of terminally ill persons or persons with severe physical or mental disability, persons afflicted with HIV or AIDS, persons addicted to a dependence-forming substance such as narcotics drugs or alcohol or conducting public awareness of preventive health, family planning or prevention of HIV infection are exempt from GST.

Similarly, if charitable trusts running a hospital appoint a specialist doctors, nurses and provide medical services to patients at a concessional rate, such services are not liable to GST.

But on the other hand, if hospitals hire visiting doctors or specialist and deduct some money from the consultation fees payable to doctors, there may be GST on such amount deducted from fees paid to doctors.

There is no exemption for supply of goods by a charitable trust. Thus any goods supplied by such charitable trusts for consideration (sale) shall be liable to GST.

Services by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India and transportation of a patient to and from a clinical establishment are exempt from GST

But services such as hair transplant, cosmetic or plastic surgery done purely as a luxury are not GST exempt.

All services other than mentioned here provided to charitable trusts will attract GST.

### **TRUST CARRYING ON RENTAL ACTIVITIES**

Services by a hotel, inn, guesthouse, club or campsite etc., for residential or lodging purposes, having declared tariff of a unit of accommodation below Rs.1000 per day or

equivalent are free of GST. Hence hostels, old age homes, working women hostels, hotels, clubs, guest houses, etc. if they charge below Rs. 1000/- per day for lodging (accommodation only), then they are free from GST. Here boarding is a taxable supply and will attract GST.

### **TRUST CARRYING ON AGRICULTURAL ACTIVITIES**

- 1) Cultivation of plants and rearing of all types of animals (except horse) for the purpose of food, fibre, fuel or raw material are kept out of GST.
- 2) Hence, all agricultural related activities, supply of labour for agriculture, processing involved in an agricultural farm, renting or leasing of agro machinery or vacant land with or without structure, harvesting, drying, packing, loading, unloading and transportation to warehouse, agents purchasing from farmers and even agricultural activity by a worker are all exempt from GST.
- 3) Hence, any farm produce, poultry, bee keeping etc. and the service providers for the industry like seeds, manure, chicken feed, medicine, etc. are exempt from GST.

### **DONATIONS AND OTHER ITEMS**

- 1) Any donation received without any consideration is supply of neither goods nor service it is exempt from GST.
- 2) Items with alcohol content, will not attract GST, but will incur the usual VAT and Excise duty.

Normal unpacked food items like rice, dal, pulses, grains vegetables fruits, etc. will not attract GST.

### **CONCLUSION :**

The study concludes the items which are taxable under GST Act 2017. The charitable organizations must be made aware of the facts that even a non-profit organizations will attract GST within its norms. Thus, following will attract GST:

- 1) Any construction or building maintenance related or any other contract which will attract GST and GST TDS too, if the value exceeds Rs.2.5. lakh per contract. Here it has to be noted that the earlier exemption from service tax for religious institutions has now been withdrawn.
- 2) Any occasion of reverse charge mechanism (RCM), especially while getting the services of an advocate or transport agency or an author writing for a publishing agency.
- 3) Any job work related to printing and textile processing.
- 4) Input service of all approved educational institutions of higher studies as well as input and output services of all unrecognized educational institutions of higher studies will attract GST.
- 5) Hence, services by way of catering, canteen, security contracts for an organization other than the pre-school and school up to higher secondary will attract GST.



- 6) GST will Attract if room provided on Rent exceed 1000/- per day (5%)Hall will Attract GST if Rent exceeds 10000/- (12%)
- 7) Any e-commerce or online buying and selling will attract GST.
- 8) GST of 5% is applicable on rosaries and 12% on statues but clay statues will not attract GST.
- 9) Any activity of business nature that involves a sale component or consideration (e.g., sale of school uniforms, badges, stationery or other handicraft material, sale of scrap, etc.) will attract GST.
- 10) Ordinary packed food items and sugar will carry a GST of 5%
- 11) Similarly, any incentive received, income on advertisement in souvenirs, hoarding rent, events income, entry tickets of more than Rs.250 for events, etc. will attract GST.

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