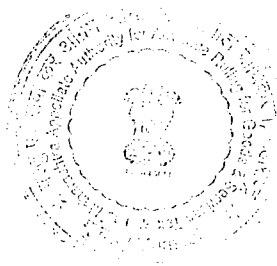


THE MAHARASHITRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX
(Constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)
ORDER NO. MAH/AAAR/AM-RM/09/2022-23Date- 21.09.2022

BEFORE THE BENCH OF

- (1) Shri Ashok Kumar Mehta, MEMBER (Central Tax)
(2) Shri Rajeev Kumar Mital, MEMBER (State Tax)

Name and Address of the Appellant:	M/s. Jayshankar Gramin and Adivasi Vikas Sanstha, 1st Floor, Madhav Parvati Complex, Veer Savarkar Marg, Sangamner, Ahmednagar-422605
GSTIN Number:	272100000864ART
Clause(s) of Section 97, under which the question(s) raised:	(e) determination of the liability to pay tax on any goods or services or both; (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:	28.07.2022
Present for the Appellant:	Shri Durgesh Kalantri, C.A.
Details of appeal:	Appeal No. MAH/GST-AAAR/10/2021-22 dated 10.12.2021 against Advance Ruling No. GST-ARA-97/2019-20/B-91 dated 10.11.2021
Jurisdictional Officer:	State Tax Officer, Sangamner_701



(Proceedings under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

1. At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the MGST Act.
2. The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [**hereinafter referred to as “CGST Act” and “MGST Act”**] by M/s. Jayshankar Gramin and Adivasi Vikas Sanstha, 1st Floor, Madhav Parvati Complex, Veer Savarkar Marg, Sangamner, Ahmednagar-422605 (**“hereinafter referred to as “the Appellant”**) against the Advance Ruling No. GST-ARA-97/2019-20/B-91 dated 10.11.2021, pronounced by the Maharashtra Authority for Advance Ruling (hereinafter referred to as **“MAAR”**).

BRIEF FACTS OF THE CASE

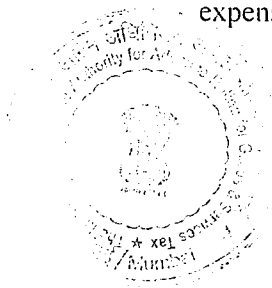
- 3.1 The Appellant is a charitable trust registered under Maharashtra Public Charitable Trust Act, 1950. vide Registration No. F-2378 w.e.f. 15.02.1993. The Trust Jayshankar Gramin and Adivasi Vikas Sanstha Sangamner (hereafter referred to as ‘trust’) is also registered under Societies Registration Act, 1860, vide registration number Maha/2041/92 w.e.f. 23.12.1992. The Appellant is registered under Section 12AA of the Income Tax Act, 1961 w.e.f. 08.10.2009 vide Registration No. PN/CIT-I/REGN./12A(a)/63/2009-10/5304 & PN/CIT/80G/115/2009-10/5298.
- 3.2 The trust has its head office at 1st floor, Madhav Parvati Complex, Veer Savarkar Marg, Sangamner. The destitute for children is located at Akole bypass road, Sangamner. The trust undertakes services to orphans and homeless children by way of providing shelter, education, guidance, clothing, food and health, on behalf of the Women & Child Development Ministry of Government of Maharashtra.
- 3.3 The trust also renders services under **“One stop crises centre” scheme (Subject matter in Advance Ruling)** introduced by Ministry of Women and Child Development to destitute women who are litigating divorce, or homeless, or the victims of domestic violence. Central Government also gives grants through Women & Child Development

Ministry for awarding shelter, food, medical facilities, clothing, etc. to these destitute women who are the victims of domestic violence, or are divorcee, or are homeless, or are the rape victims. The trust represents them before legal forums, including lodging FIR at police stations against the culprits. The trust also arranges for counselling them through expert counselors to bring them out of the trauma and help them to lead normal life. These victim women are sent by police stations, or anybody who knows that women are victims of violence.

3.4 Under the “One Stop Crises Centre” Scheme, the Appellant was selected as an implementation agency vide “Aadesh bearing number 686/19-20 dated 28.05.2019”. Further, a grant of amount up to Rs. 2,00,000/- per month was approved under the said scheme wherein the trust will only act as an implementing agency, and will use grant amount in specified manner. Grant amount of Rs. 2,00,000/- is factually to be used as under:

Sl. No.	Designation	Required of People	no. Honorarium (per month per person)	Toal Honorarium (per month)
1	Centre Administrator	01	25,000	25,000
2	Case Worker	02	15,000	30,000
3	Police Facilitation Officer (PFO)	01	15,000	15,000
4	Para Legal Personnel / Lawyer	01	15,000	15,000
5	Para Medical Personnel	02	18,000	36,000
6	Counsellor	01	15,000	15,000
7	IT Staff	01	15,000	15,000
8	Multi-Purpose Helper	01	9,000	9,000
9	Security Guard/Night Guard	04	10,000	40,000
	Total	14		2,00,000

3.5 Further, the amount up to Rs. 2,00,000/- is granted only after presentation of list of expenses incurred. Therefore, the grant amount is in **nature of reimbursement** of



expenses incurred on behalf of Ministry of Women and Child Development. It is submitted that if monthly expenses incurred are less than the said limit, in that case, the lesser amount, which is incurred actually, is granted.

- 3.6 Since the Appellant was not sure of the GST applicability of the “One Stop Crises Centre”, an application was made with the Authority of Advance Ruling for the GST, Maharashtra (MAAR) for the purpose to ensure if the aforementioned transactions are liable to GST or not.
- 3.7 The MAAR passed an order bearing No.GST-ARA-97/2019-20/B-91 dated 10.11.2021 confirming the GST applicability on the impugned transactions.

GROUND OF APPEAL

- 4 Aggrieved by the aforesaid Advance Ruling passed by the MAAR, the Appellant has preferred the present appeal before the Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax (hereinafter referred to as the “MAAAR”) on the following grounds:
- 4.1 That MAAR, in their observations and findings in point numbers from 5.5 to 5.13 in the impugned Advance ruling order, has made a reference to the exemption Notification No. 12/2017 dated 28.06.2017 with regard to the charitable activities; that the MAAR has righteously noted that the main thrust is to identify as to whether the impugned activities are covered under the definition of charitable activities, or not. However, the MAAR has missed on the interpretation of the essence of the definition of religion and rather they have vested their thought process on the other charitable activities as mentioned in the said notification.
- 4.2 That the activities of supply by the Appellant trust is fully exempted from levy of tax in terms of the entry at Sl. No. 1 of Notification No. 12/2017 dated 28.06.2017, the relevant portion of which is being reproduced herein under:

Sl. No.	Chapter, Section, Heading Group or Service Code (Tariff)	Description of Services	Rate	Condition
1	Chapter 99	Services by an entity registered under section 12AA of the Income Tax Act, 1961 (43 of 1961) by way of charitable activities.	Nil	Nil



Thus, Sl. No. 1 of the aforementioned notification exempts the services by trust. The Appellant trust is registered under Section 12AA of the Income Tax Act, 1961 vide registration number PN/CIT-I/REGN./12A(a)/63/2009-10/5304 dated 08.10.2009. Further, the charitable activities enumerated in the aforesaid notification has been defined under the definition section of the said notification at clause (r), which reads as under:

(r) "charitable activities" means activities relating to-

(i) public health by way of, -

(A) care or counseling of

(I) terminally ill persons or persons with severe physical or mental disability;

(II) persons affected with HIV or AIDS;

(III) persons addicted to a dependence-forming substance such as narcotic drugs or alcohol; or

(B) public awareness of preventive health, family planning or prevention of HIV infection;

(ii) **advancement of religion**, spirituality or yoga;

(iii) 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;

(iv) preservation of environment including watershed, forests and wildlife;

4.3 Since, **advancement of religion is not defined anywhere**, so the general parlance understanding is to be considered for deriving the consensus on the concept of Advancement of Religion.

4.4 **As per the Charity commission of England & Wales** - To be a charitable institute, the fundamental states that the cause of **religion must be advanced**. In general, to 'advance' a religion means to promote or maintain or practice it, and increase belief in the supreme being or entity; that is the object or focus of the religions. Promoting particular tenets of religion: some charities whose aims include advancing religion might choose to concentrate on promoting particular tenets of the religion in order to further what they believe to be an inherently important aspect of that religion.

4.5 Further, to be recognized as charitable, all organizations advancing religion must be able to show that there is a moral or ethical framework which is promoted by the religion.

This moral or ethical framework is considered by many to offer benefits to wider society, as well as individual comfort, solace and a sense of purpose.

4.6 As per the Government of Canada - To advance religion in the charitable sense means to preach and advance the teachings of a religious faith, and to maintain the doctrines and spiritual observances on which those teachings are based, such as:

- establishing and maintaining buildings for religious worship and other religious use;
- organizing and providing **religious instruction**;
- carrying out pastoral and missionary work;

4.7 As far as the **Indian religious belief** is concerned, our religion preaches that the service to the needy, suppressed, homeless, orphans, destitute, etc., is of utmost importance. Our belief is based on the fact that we in India strongly support MANAV SEVA PARMO DHARMA (meaning thereby service to the needy is of foremost importance). Therefore, having regard to this very meaning of the religion, it is contended that the activities done by the Trust are in the nature of the **advancement of religion**. Thus, as per the provisions as envisaged in entry at Sl. No. 1 of the **Notification No. 12/2017 dated 28.06.2017**, the grant/aid received by the trust is not liable to GST.

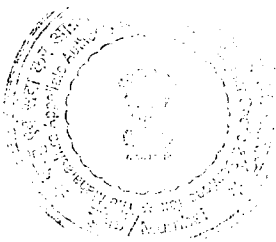
4.8 The MAAR, in their observations and findings in point number 5.14 in the Advance Ruling Order, has made a reference to the definition of Supply, Business & Consideration to conclude that the impugned transactions carried out by the Appellant are in the nature of business wherein they are receiving the grant-in-aid as consideration from the Government, thereby, rendering the impugned transactions as supply in terms of Section 7(1)(a) of the CGST Act, 2017.

4.9 In this regard, reference has been made to the definition of "supply" as envisaged under Section 7(1)(a) of the CGST Act, 2017, which reads as under:

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, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.

4.10 The two most important terms used in the definition of Supply are 'consideration' and 'business'. These are now looked into to understand application of GST on NGOs.



- 4.11 The term “consideration” has been defined under Section 2(31) of the CGST Act, 2017, meaning as any payment made, or to be made, in response to 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 Central or State Government. Here the words ‘any other person’ become important in the context of NGOs.
- 4.12 That in the FY 2019-20, the trust reported net deficit of Rs 12,77,832/-. Therefore, grants received by the trust only cover the expenses incurred in specified manner and services provided by the trust to the government (as an implementing agency) are virtually free of cost and lacks essence of consideration. Further, in the case of *APITCO Vs. Commissioner of Service Tax, Hyderabad (2010 (7) TMI 176 - CESTAT, BANGALORE)*, in which the Hon’ble Supreme Court upheld the decision of Tribunal that the assessee company had implemented welfare schemes consisting of training, technology facilitation, etc. for the Government for the benefit of the vulnerable / weaker sections of the society and grant in aid received from the Government was utilized for this purpose alone. Tribunal had held that in implementation of the Governmental schemes, the assessee as an implementing agency did not render any taxable “service” to the government.
- 4.13 The Judgment further stated that the department seems to be considering the Governments to be “clients” of APITCO. The question now is whether there was “service provider-client” relationship between the assessee and the governments. Here, again, the nature of the amounts paid by the governments to the assessee is decisive. A client must not only pay the expenses of the service but also the consideration or reward for the service to the service provider. Admittedly, in the present case, there was no payment, by any government to the assessee, of any amount in excess of what is called “grant-in-aid”. Thus, any service provider-client relationship between the assessee and the governments is ruled out.
- 4.14 Another important term used to define supply is *furtherance of business*. Section 2(17) of CGST Act defines business as trade, commerce, manufacture, profession, vocation, adventure, wager (bet) or any other similar activity, whether or not it is for a pecuniary benefit. All the activities covered under the definition are such which have a profit element, and it excludes non-profits. Some doubts have been expressed regarding the implications of last part of the definition, i.e., whether or not it is for pecuniary benefit means that it covers non-profit activities.



- 4.15 In our view this is not so since the last term cannot be read independent but only in terms of activities as defined under business which as explained earlier are clearly activities undertaken with intention of profits. If an activity is undertaken by a non-profit entity, first assumption would be that activity is not furtherance of business, unless otherwise can be proved.
- 4.16 The MAAR has vested their thought process on the definition of consideration which excludes subsidy (meaning drawn by the MAAR is grants included). They have also rightly stated that all 3 conditions must be fulfilled, i.e., supply consideration & business; however, the MAAR have somehow overlooked the fact that the for a transaction to be taxable there must be activities happening in the course & furtherance of business. Here, if an activity is undertaken by a non-profit entity, first assumption would be that activity is not for furtherance of business, unless otherwise can be proved.
- 4.17 The Appellant is an implementing agency which is appointed by the Government authorities to carry on activities for social, medical & mental welfare of destitute women who are litigating divorce or homeless or the victim of domestic violence. So, no activities of furtherance of business in this transaction. Mere non-inclusion of definition of grant in consideration is not a litmus test. The Authorities must have actually appreciated the fact that the activities are not in the course and furtherance of business.
- 4.18 REIMBURSEMENT of ACTUAL EXPENSES Under the one stop crisis Centre Scheme; the Appellant was selected as an implementation agency vide "Aadesh bearing number 686/19-20 dated 28.05.2019" (also refer agreement dated 31.03.2019); further a grant of amount up to Rs. 2,00,000/- per month was approved under the said scheme; wherein the trust will only act as an implementing agency and will use grant amount in specified manner.
- 4.19 Grant amount of Rs. 2,00,000/- is factually to be used as under:

Sl. No.	Designation	Required No. of People	Honorarium (per month per person)	Total Honorarium
1	Centre Administrator	01	25,000	25,000
2	Case Worker	02	15,000	30,000

3	Police Facilitation Officer (PFO)	01	15,000	15,000
4	ParaLegal/Personnel/Lawyer	01	15,000	15,000
5	Para Medical Personnel	02	18,000	36,000
6	Counsellor	01	15,000	15,000
7	IT Staff	01	15,000	15,000
8	Multi-purpose Helper	01	9,000	9,000
9	Security Guard/Night Guard	04	10,000	40,000
	Total	14		2,00,000

Further, amount up to Rs. 2,00,000/- is granted only after presentation of list of expenses incurred; therefore, grant amount is in nature of reimbursement of expenses incurred on behalf of Ministry of Women and Child Development. If monthly expenses incurred are less than the said limit, lesser amount is granted. Considering the modus operandi, here **trust is only acting as a pure agent of government.**

4.20 In the entire order the MAAR has nowhere included their thought process on the implication of the transaction as reimbursement of expenses. The **MAAR has not considered the facts presented in totality.**

4.21 The modus operandi of transactions is such that the Appellant makes payment of Rs 2,00,000/- as honorarium to the various designated persons as mentioned in the order. The same is paid vide banking channel. Further, amount up to Rs. 2,00,000/- is granted only after presentation of list of expenses incurred; therefore, grant amount is in nature of **reimbursement of expenses** incurred on behalf of Ministry of Women and Child Development. If monthly expenses incurred are less than the said limit, lesser amount is granted. Considering the modus operandi, here the **trust is only acting as a pure agent of government agency & there is no consideration over and above actual reimbursements, there is no implication of GST tax on the aforementioned transactions.**



5 **GST Additional Burden on the implementation agency vis-à-vis Government:**

- 5.1 Since the amount charged by the Appellant is equal to the amount paid by them as required by the order, levy of GST shall be an additional burden on the Appellant trust. As per the GST laws the Tax is to be calculated on Supply value. For Example, in present case the Appellant present proof of payment of Rs 2,00,000/- to designated persons.; further it approaches the Government agency for reimbursement thereon;

No.	NET	TAX	TOTAL	Remarks
1	2,00,000/-	36,000/-	2,36,000/-	Refer 15.2
2	1,69,491/-	30,509/-	2,00,000/-	Refer 15.3
3	2,00,000/-	0	2,00,000/-	Refer 15.4

- 5.2 As per the advance ruling order received if the transaction is liable to GST then as per sr. no. 1 above the implementing agency shall expend Rs 2,00,000/- and will bill Rs 2,36,000/- to the Government agency. However, since the government agency has capped the transaction to Rs 2,00,000/- they shall not be paying Rs 36,000/- as GST on the above transactions. Thereby the **Appellant Trust shall incur cost of Rs 36,000/- for serving humanity.**
- 5.3 In the second Scenario, since the implementing agency is paying Rs 2,00,000/- as total consideration, then as per the inclusive concept the tax liability arrives at Rs 30,509/-. Here again **the Appellant Trust shall incur cost of Rs 36,000/- for serving humanity.**
- 5.4 In the third Scenario (ideal scenario) there is no GST charged on the transaction. This is an ideal scenario since, for the activities as mentioned above that serves humanity and thereby saves the religion, it is transaction wise inefficient to levy, collect and pay GST on these activities;
- 5.5 There is unnecessary flow of transactions if, the Government (ministry of Women & Child Development) pays GST to the implementing agency & Implementing agency pays back to the Government (CBIC), and Government further uses these funds for promoting charitable activities.
- 5.6 To be precise the one stop crisis scheme was planned by the Central Government and implementation was left to the states. **This scheme was funded vide the Nirbhaya**

Fund. As per the Central Government guidelines various parameters of the expenses to be made vide the schemes are mentioned. Under the said guidelines wherever there is construction activity involved, the Central Government has clearly worked out the GST portion to be paid (refer pg. 31 & 31 of central government guidelines). However, in case of the One Stop management centre (pg. No 25 of central government guidelines) **NO GST liability** is demarcated. Hence, even the Central Government while making scheme guidelines has clearly denied the GST applicability due to the nature of transaction as previously discussed by us.

6. **Alignment of GST laws with the Women & Child Development Ministry of Government of Maharashtra- One Stop Crisis regulations —**

6.1 Since the Appellant is making payment of Rs. 2,00,000/- to the designated persons and claiming reimbursement of exact same amount from Government agency, then the GST is to be reimbursed too by the Women & Child Development Ministry of Government of Maharashtra. Since guidelines of both government ministries are not aligned (i.e CBIC vis-a-vis Women & Child Development Ministry of Government of Maharashtra) there needs to be clarity on the taxability of transaction but there needs to be **extra clarity on the payer/reimbursor** of tax in this scenario as discussed above.

6.2 To summarize, the Appellant is relying on the aforementioned 3 grounds and need clarity on the 4th issue —

- i The activities done by the Trust are in the charitable nature such as they promote the **advancement of religion**. As per the provisions as envisaged in notification no. 12 of 28.06.2017 the grant received by the trust is not liable to GST.
- ii The **definition of supply** includes consideration & furtherance of business — In the present case there exists no consideration & also there exists no course or furtherance of business, thereby, the transaction cannot be treated as supply. Since there exists no Supply, therefore, GST is not chargeable.
- iii The grants are given to an NGO under an agreement with detailed budget, which outlines how funds are to be utilized; The grant (which is subject matter of Advance ruling) is granted only after presentation of list of expenses incurred, therefore, grant amount is in nature of **reimbursement of expenses** incurred on behalf of Ministry of Women and Child Development. It should be noted that if monthly expenses incurred

are less than the said limit, lesser amount is granted. Considering the modus operandi, here we believe that **trust is only acting as a pure agent of government.**

- iv Further, since they are making payment of Rs. 2,00,000/- to the designated persons and claiming reimbursement of exact same amount from Government, then the GST is to be reimbursed too by the Women & Child Development Ministry of Government of Maharashtra. Since the **One Stop Crisis centre GR is not aligned with the GST advance rulings**, we request you to further clarify on the ambiguity raised due to the advance ruling order made in our issue.

RESPONDENT'S SUBMISSIONS

7. The Respondent vide their letter dated 27.12.2021 have filed the written submissions in the subject Appeal, the extract of which is mentioned herein below:
- 7.1 That any activity carried out by the entity in the course or furtherance of business is included in the ambit of business definition, and hence, will be considered as "supply" under GST;
- 7.2 Although the phrase "in the course or furtherance of business" is not defined under the GST law, but the same is broad enough to cover any supply made in the connection of the business;
- 7.3 That from the foregoing, it is clear that GST provisions has not given a separate registration status to the charitable trusts. However, "persons" under the GST law includes charitable trust and the activities of charity are within the scope of the definition of business under the Act; Further, pecuniary benefit is not the determining criterion, and accordingly, charitable or philanthropical activities would also get covered under the definition of "business";
- 7.4 That the activities undertaken by the Appellant are not covered under the ambit of "charitable activities" provided under the clause (r) of the definition section of the Notification No. 12/2017-C.T. (Rate) dated 28.06.2017, and hence, do not satisfy the conditions prescribed under entry at Sl. No. 1 of the Notification No. 12/2017-C.T. (Rate) dated 28.06.2017, and thereby, supply made by the Appellant will not be exempted from the levy of GST;
- 7.5 That the Appellant, in view of the above, are required to obtain GST registration, and are liable to GST at the rate of 18% on the supply made by them.

Appellant's Additional Submissions dated 27.06.2022

8. The Appellant, vide their letter dated 27.06.2022, have made additional submissions, extracts of which are enumerated hereunder:
- 8.1 As the Appellant have been selected as an implementation agency of the Government's "One Stop Crises Centre" Scheme, wherein the Appellant are being reimbursed by the Ministry of, for the expenses incurred towards the supply of goods and services to the destitute women, the Appellant can be construed as acting as a "Pure Agent" of the Women and Child Development, Government of India, and thereby, the impugned amount reimbursed by the Government will not be subject to the levy of GST in terms of the Rule 33 of the CGST Rules, 2017.
- 8.2 That the amount sanctioned by the Government to the Appellant in respect of the "One Stop Crises Centre" Scheme can be construed as 'subsidy' as per the general parlance meaning of the term 'subsidy'. As per 'Words and Phrases, Permanent Edition, Vol.40', the term 'subsidy' is described as follows:
- "A subsidy is a grant of funds or property from a government as of the state or municipal corporation to a private person or company to assist to the establishment or support of an enterprise deemed advantageous to the public; a subvention"*
- That the Appellant are reimbursed up to Rs.2,00,000/- by the Central Government against the expenses incurred towards supply of goods and services to the destitute women under the subject scheme; that the said supply of goods and services, viz. food, shelter, medical assistance, legal assistance, etc. provided to the destitute women can aptly be deemed as social service, being rendered to the women in particular and public in general, and thereby, the said reimbursement amount of Rs.2,00,000/- can righteously be deemed as subsidy, sanctioned by the Government; that as per the definition of the term "consideration" provided under section 2(31) of the CGST Act, 2017, subsidy given by the Central Government or a State Government shall not be included under the definition of the term "consideration", and hence, the subject transaction between the Appellant and the Government would not be considered as "supply" in terms of the Section 7(1)(a) of the CGST Act, 2017, and accordingly, the reimbursement amount under question paid by the government to the Appellant under the subject scheme will not be subject to levy of GST.
- 8.3 That in case the impugned transaction is held to be taxable, the Appellant would have to bear the additional cost of the levy of GST thereon for serving humanity; that they have also sought for the alignment of GST laws with the Women and Child Development

Ministry of the State of Maharashtra so that they do not have to suffer the additional cost of the levy of GST on the subject transactions in case the subject transactions are held to be taxable.

PERSONAL HEARING

9. The personal hearing in the matter was conducted on 28.07.2022 in the virtual mode via Video Conferencing, which was attended by Shri Durgesh Kalantri, C.A, on behalf of the Appellant, wherein the Appellant reiterated all their earlier submissions made before the Appellate Authority.
10. Shri Kalantri, in the aforesaid personal hearing, submitted that the “One Stop Crises Centre” scheme was planned by the Central Government and implementation was left to the states; that the said scheme was funded vide the Nirbhaya Fund; that as per the Central Government One Stop centre Implementation guidelines, various parameters of the expenses to be made vide the schemes are mentioned in which wherever there is a construction activity involved, the Central Government has clearly worked out the GST portion to be paid, which is not the case with the subject scheme of “One Stop Crisis Management Centre”, i.e., no GST liability is demarcated. He further contended that the subject scheme guideline has explicit provisions for TDS whereas there is no provision for any GST on the impugned amount reimbursed to the Appellant, and thereby, contended the subject amount received by them was not liable to GST.
11. He further contended that the Appellant were implementing the objectives of the “**One Stop Crises Centre**” Scheme floated by the Ministry of Women and Child Development, Government of India, wherein they provided the food, cloths, shelter, medical care, legal assistance, etc., to the destitute women who are either litigating divorce, or are the victims of the rape or domestic violence. He further contended that since the Appellant were being reimbursed only to the extent of expenditure incurred by them towards undertaking various activities as envisaged under the subject scheme, they should be deemed as pure agent of the Government of Maharashtra, and hence there should not be any levy of GST on the reimbursement amount received from the Department of Women and Child

Development, Government of Maharashtra. He also alternatively contended that since the impugned amount were granted to the Appellant for undertaking the social activities grossly meant for welfare of destitute women in particular and thus public in general, therefore, the said amount received from the State Government may be construed as “**subsidy**” in terms of the dictionary meaning of the same as the term “subsidy” has not been defined under the CGST Act, 2017.

DISCUSSIONS AND FINDINGS

12. We have carefully gone through the appeal memorandum encapsulating the facts of the case and the grounds of the appeal along with all the additional submissions made by the Appellant. We have also examined the impugned Advance Ruling passed by the MAAR, wherein it has been held that the reimbursement amount received by the Appellant from the Department of Women and Child Development, Government of Maharashtra under the subject “One stop Crises Centre Scheme” will be subjected to levy of GST. It is further noted that the MAAR has observed that the impugned activities undertaken by the Appellant will not be covered under the scope of the charitable activities defined under clause (r) of the definition section of the Notification No. 12/2017-C.T. (Rate) dated 28.06.2017, and therefore, the said activities will not get covered under the entry at Sl. No. 1 of the said Notification No. 12/2017-C.T. (Rate) dated 28.06.2017.
13. On perusal of the case records and the impugned order passed by the MAAR, the moot issues before us are as under:
 - (i) Whether the impugned activities undertaken by the Appellant as an implementing agency of the Government can be construed as services;
 - (ii) If yes, whether the same can be construed as supply in terms of section 7(1)(a) of the CGST Act, 2017;
 - (iii) Whether the impugned activities undertaken the Appellant can be construed as “charitable activities” in terms of the clause (r) of the definition section of the Notification No. 12/2017-C.T. (Rate) dated 28.06.2017;
14. At the outset, we would like to examine the first moot issue, viz. whether the impugned activities undertaken by the Appellant as an implementing agency of the Government under the “One Stop Crises Centre” Scheme, floated by the Women and Child Development Ministry of the Government of India, can be construed as services or not

15. To examine this issue, we would first like to refer to the definition of “service” provided under Section 2(102) of the CGST Act, 2017, which reads as under:

Section 2(102)

“services” means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

16. Thus, the GST Law has given a very wide connotation to the term “services”, which cover any activities other than those which involve goods, money and securities. As the activities undertaken by the Appellant do not entail supply of any goods, money, or securities to their recipient, which in the present case is the Government of Maharashtra, who is compensating for the subject activities undertaken by the Appellant under the said scheme of “One stop Crises Centre”, the activities of the Appellant would aptly be construed as services.
17. Now, we proceed to examine the second moot issue, viz. whether the subject activities undertaken by the Appellant can be construed as supply in terms of section 7(1)(a) of the CGST Act, 2017 or not. To examine this issue, we would like to refer to the definition of the term “supply” as provided under section 7(1)(a) of the CGST Act, 2017, which reads as under:

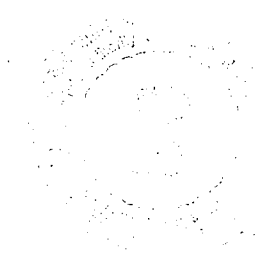
Section 7

(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, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.”

18. Thus, the term “**Supply**”, under the CGST Act, has got very wide connotation due to the presence of the clause “**all forms of supply of goods or services or both**”. For any transaction to be qualified as “**supply**” under CGST Act, 2017, the said transaction is required to satisfy the following pre-requisites:

- (i) **that such supply should be made by a person for a consideration;**
- (ii) **that such supply should be made in the course or furtherance of business;**



19. Now, we would like to refer to the definition of the term “**consideration**” as provided under Section 2(31) of the CGST Act, 2017, which reads as under:

“consideration” in relation to the supply of goods or services or both includes-

- (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 State Government;*
- (b)

20. On perusal of the aforesaid definition of the term “**consideration**”, it is seen that the term “**consideration**” shall not include any “**subsidy**” given by the Central Government or State Government. Now, we would like to dissect as to whether the reimbursement amount received by the Appellant from the Women and Child Development Department of the Government of Maharashtra can be construed as subsidy or otherwise. In this regard, we would like to understand the meaning of the term “**subsidy**”. Here, it is seen that the term “**subsidy**” has not been defined under the CGST Act, 2017. In such case, we will have to resort to the dictionary meaning of the term “**subsidy**”.

Meaning of “Subsidy” as per the “Merriam-Webster” Dictionary:

a grant or gift of money: such as

a: a sum of money formerly granted by the British Parliament to the crown and raised by special taxation

b: money granted by one state to another

c: a grant by a government to a private person or company to assist an enterprise deemed advantageous to the public

Meaning of “Subsidy” as per “dictionary.com”:

a direct pecuniary aid furnished by a government to a private industrial undertaking, a **charity organization**, or the like:

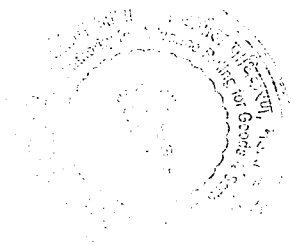
a sum paid, often in accordance with a treaty, by one government to another to secure some service in return;

a grant or contribution of money;

money formerly granted by the English Parliament to the crown for special needs;




21. On perusal of the aforesaid dictionary meanings of the term “**subsidy**”, it is apparent that any money/amount granted by a government to any private person or company for undertaking any charitable activities, which are beneficial to the public, will be construed as subsidy. In the present case, the Appellant are being granted a fixed amount of money from the Government of Maharashtra under the “**One stop crises Centre Scheme**” for taking overall care of the destitute women who are litigating divorce, or homeless, or the victims of domestic violence. The said activities undertaken by the Appellant are clearly for the welfare of these destitute women, and thereby, serving the mankind in general. Hence, we are of the opinion that the said amount of money reimbursed by the government to the Appellant is nothing but subsidy as the entire money is being spent in the activities which are advantageous to the public.
22. Now, once it has been established that the subject amount reimbursed by the government to the Appellant is in the nature of subsidy, it is concluded that the said reimbursement amount cannot be construed as “**consideration**” in terms of its definition provided under Section 2(31) of the CGST Act, 2017, which has been reproduced hereinabove.
23. Further, in absence of any consideration, it is opined that the subject transactions/activities undertaken by the Appellant, wherein they are providing various assistances, such as food, shelter, legal assistances, medical assistances, etc., to the destitute women, would not be construed as supply in terms of **Section 7(1)(a) of the CGST Act, 2017**, which stipulates that for any transactions/activities to be considered as supply, there has to be an element of “**consideration**”. In absence of the same, such transactions/activities will not be considered as “**supply**”.
24. Since it has been established that the subject activities undertaken by the Appellant will not be construed as supply in terms of section 7(1)(a) of the CGST Act, 2017, we will not proceed to examine the third moot issue as to whether the impugned activities undertaken the Appellant can be construed as “charitable activities” in terms of the clause (r) of the definition section of the Notification No. 12/2017-C.T. (Rate) dated 28.06.2017 as the determination of the same will have no bearing on the applicability of GST on the impugned transactions/activities.
25. In view of the above discussions and findings, we pass the following order:



ORDER

26. We, hereby, set aside the Ruling passed by the MAAR vide Order No. GST-ARA-97/2019-20/B-91 dated 10.11.2021, by holding that since the impugned activities undertaken by the Appellant are not construed as "supply" in terms of section 7(1)(a) of the CGST Act, 2017, the reimbursement amount paid by the Maharashtra Government to the Appellant for undertaking the activities specified under "One stop Crises Centre Scheme" floated by the Central Government, will not be subject to the levy of GST. Thus, the Appeal filed by the Appellant stands disposed of in above terms.


(RAJEEV KUMAR MITAL)
MEMBER


21.9.2022
(ASHOK KUMAR MEHTA)
MEMBER



Copy to the:

1. Appellant;
2. AAR, Maharashtra;
3. Pr. Chief Commissioner, CGST and Central Excise, Mumbai Zone;
4. Commissioner of State Tax, Maharashtra;
5. State Tax Officer, Sangamner_701;
6. Office copy;