

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

(Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri B. V. Borhade, Joint Commissioner of State Tax

(2) Shri Pankaj Kumar, Joint Commissioner of Central Tax

| | | |
|--|------------------------|---|
| GSTIN Number, if any/ User-id | | 27AABTS2637Q1ZW |
| Legal Name of Applicant | | Shrimad Rajchandra Adhyatmik Satsang Sadhana Kendra |
| Registered Address/ Address provided while obtaining user id | | 3rd, Floor, Bhupati Chambers. Mathew Road, Opera House, Mumbai City, Maharashtra – 400004. |
| Details of application | | GST-ARA, Application No. 41 Dated 17.03.218 |
| Concerned officer | | Assistant Commissioner of Sales Tax (D-836) Nodal Div - 3. Mumbai |
| Nature of activity(s) (proposed / present) in respect of which advance ruling sought | | |
| A | Category | |
| B | Description (in brief) | The Applicant is a religious charitable trust registered under Section T2AA of the Income Tax Act, 1961 carrying out religious and charitable activities |
| Issue/s on which advance ruling required | | (v) determination of the liability to pay tax on any goods or services or both (vi) whether applicant is required to be registered under the Act (vii) whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term |
| Question(s) on which advance ruling is required | | As reproduced in para 02 of the Proceedings below. |

PROCEEDINGS

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by Shrimad Rajchandra Adhyatmik Satsang Sadhana Kendra, the applicant, seeking an advance ruling in respect of the following questions:

- 1) Whether the applicant which is a charitable trust with the main object of advancement of religion, spirituality or yoga can be said to be in business so as to attract the provisions of Central Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017?
- 2) Whether the applicant which is a charitable trust with main object of the advancement of religion, spirituality or yoga is liable to registration under the provisions of Central Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017?
- 3) Whether sales of spiritual products which is incidental / ancillary to main charitable object of the applicant can be said to be business of the applicant in terms of the definition in Section 2(17) of the Central Goods and Service Tax Act 2017 and option provision of Maharashtra Goods and Service Tax Act 2017?
- 4) Whether the sale of spiritual products can be said to be supply under Section 7 of the Central General Sales Tax Act, 2017 and equivalent provision of the Maharashtra Goods and Service Tax Act, 2017 so as to attract GST?



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 provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

02. FACTS AND CONTENTION - AS PER THE APPLICANT

The submissions, as reproduced verbatim, could be seen thus-

Brief Description of Activity carried out by Applicant:

- 1.1. The Applicant is a religious charitable trust registered under Section 12AA of the Income Tax Act, 1961 carrying out religious and charitable activities.
- 1.2. The Trust is principally engaged in the field of spreading the knowledge of Jain Dharam and advancement of teachings of Param krupaludev Shrimad Rajchandra. The Trust holds various Satsangs and Shibirs for spreading the knowledge of the Jain Dharam.
- 1.3. The Trust carries out activities for helping people understand the Jain Dharm and its Philosophy by publications of books and other materials. The trust runs hospitals for giving Medical help to people in general.

Statement of relevant facts having a bearing on the question(s) raised

2. Brief Facts

- 2.1. Shrimad Rajchandra Adhyatmik Satsang Sadhana Kendra (hereinafter referred to as "applicant") is a public charitable and religious trust engaged in advancement of the teachings of Paramkrupaludev Shrimad Rajchandra and spreading the knowledge of Jain Religion entrusted by Shri Mahavir Swami and other Tirthankars. The copy of the Trust Deed is annexed herewith as Annexure 4.
- 2.2. The main object of the applicant trust is to spread the knowledge of the Jain Dharam and advancement of teachings of Param krupaludev Shrimad Rajchandra
- 2.3. The ancillary and incidental objects of the applicant trust are to carry out activities for advancement of main object such as Satsang, Shibirs, etc. To spread knowledge of the Jain Dharam through publications of books, audio CDS, DVDs, etc. and other materials for students and public in general and to set up organizations for helping people. The ancillary object also includes, protecting birds and animals from being killed in slaughter houses and other activities.
- 2.4. The applicant was registered under the erstwhile Maharashtra Value Added Tax Act, 2002 in view of the specific Explanation in the definition of "dealer" under Section 2(8) of the MVAT Act, 2002.
- 2.5. With effect from 1.7.2017, the Goods and Service Tax was brought into force and the existing registered dealers under the erstwhile MVAT Act, 2002 were migrated to GST.
- 2.6. In preparation for implementing GST, the Commissioner of Sales Tax, Maharashtra



issued Circular No. 357 of 2016 dated 12.11.2016 mandatorily requiring the existing registered dealers under the provisions of MVAT Act, 2002 to enroll themselves for GSTIN.

- 2.7. Thus, the applicant was also migrated to the GST and Registration Certificate was issued to applicant on 22-09-2018 in Form GST REG_06. Copy of the Registration Certificate is annexed herewith as Annexure - 5.
- 2.8. Though the applicant has been registered under GST, the applicant has not filed any returns since the applicant is not engaged in any business transactions amounting to supply liable to GST.

Statement containing the applicant's interpretation of law and or facts as the case may be, in respect of the aforesaid question(s)

1. The Applicant is not carrying on business in terms of Section 2(17) of the CGST Act, 2017
 - 1.1. The Applicant submits that the Applicant is not engaged in any of the business activity as defined under the Section 2(17) of the CGST Act, 2017.
 - 1.2. The said Section 2(17) is reproduced below for ready reference:

(17) "Business" includes

 - (a) Any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;*
 - (b) An activity or transaction in connection with or incidental or ancillary in sub-clause (a);*
 - (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;*
 - (d) Supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;*
 - (e) Provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;*
 - (f) Admission, for a consideration, of persons to any premises;*
 - (g) Services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;*
 - (h) Services provided by a race club by way of totalisator or a licence to book maker in such club; and*
 - (i) An activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;*
 - 1.3. The applicant submits that, the business definition is an inclusive definition and has various specific clauses to be included in the definition of business.
 - 1.4. The main clauses relevant for the present application are as Clause (a) and Clause (b). The applicant submits that other clauses are not applicable in the facts of the present case.
 - 1.5. Clause (a) provides that any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit shall be included in the definition of business.
 - 1.6. The applicant submits that in the present case, the applicant is a public charitable trust with the main object of advancement of religious and spiritual teachings and not engaged in any trade, commerce, manufacture, profession, vocation adventure, wager or any other similar activity. Further, the applicant does not get any pecuniary benefit from various activities carried out by the applicant in under the main object of spreading religious and spiritual teachings.



- 1.7. It is settled law that where the public charitable trust carries out activity for advancement of its main object of charitable purpose, the same cannot be said to be business in commercial sense as defined in the taxing Statute. There is no motive to earn profit out of the said activities and profit earned if any is spent on the advancement of the general public utility and hence, there cannot be said to be any business which is carried out by the Public Charitable Trust.
- 1.8. Thus, in the present case also, the main object of the applicant being advancement of the religious and spiritual teachings Paramkrupalu Shrimad Rajchandra, the applicant cannot be said to be carrying out business as defined in Section 2(17) of the CGST Act, 2017,
2. Once the main object of the applicant cannot be considered as business, the ancillary or incidental objects also cannot be considered as business.
- 2.1. The applicant submits that, once the main object of the applicant cannot be considered as business, the ancillary or incidental objects also cannot be considered as business.
- 2.2. The applicants submits that, it sells various spiritual products (Annexure - 6) such as Books, Audio CDs, DVDs, Statues, Calendars which are for the advancement of the religious teachings of the Paramkrupalu Shrimad Rajchandra. The said books give in-depth study of the teachings of Gurudev and are only for spreading the religious message. The DVDs and CDs are recorded pravachan, Satsang. Spiritual songs and bhajans for those who cannot be personally present at the events. The calendars again are used for providing information of the religious days and religious sayings.
- 2.3. The applicant further submits that, the money earned from selling the above publications are used for main object only which is charitable and religious purpose.
- 2.4. Thus, the applicant submits that, the applicant cannot be said to be carrying out business even for the publications being sold by the applicant to the devotees of Paramkrupalu Shrimad Rajchandra.
- 2.5. The applicants rely on the judgment of Hon'ble Supreme Court in the case of Commissioner of Sales Tax Vs. Sai Publication Fund (2002) 4 SCC 7 (SC), where in the Supreme Court categorically held that where the main activity is not business, then any incidental or ancillary transaction, unless established by the revenue department to be an independent business transaction, will also be considered as charitable only and not business. The Supreme Court held that where the main and dominant activity of the assessee trust in that case was to spread message of Sai Baba, then bringing out publications and sale thereof by the assessee Trust to its devotees at cost price did not amount to business.
- 2.6. The applicant further relies on the judgment of Hon'ble Supreme Court in the case of CIT Vs. Gujarat Maritime Board (2007) 14 SCC 704 (SC), where in the Hon'ble Supreme Court held that if the primary or predominant object of the trust is charitable, any other object which might not be charitable but which is incidental or ancillary to the dominant object will also be considered as charitable.
- 2.7. In view of the settled legal provision, the applicant in the present case also cannot be considered as carrying on business even for the ancillary and SS CVC incidental activity of selling the spiritual products.
3. Since, the applicant is not engaged in the carrying out business activity, the applicant cannot be said to be making supplies liable for GST.
- 3.1. The applicant submits that Section 7 of the CGST Act, 2017 defines the scope of supply which is liable for GST. The relevant portion of said Section 7 is extracted below for ready reference:
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.*
- 3.2. From a plain reading of the above Clause (a) of Section 7(1) it is clear that supply will be liable to GST only when it is made for a consideration in the course or furtherance of business.
- 3.3. As submitted above, since the present case, the applicant is not carrying out any business, there can be no supplies liable to GST at the hands of the applicant.
4. Since the aggregate of taxable supplies of goods and services does not exceed Twenty Lakh Rupees, the applicant is not liable for registration under Section 22 (1) of the CGST Act, 2017.



- 4.1. The applicant submits that Section 22(1) of the CGST Act, 2017, provides for registration under the CGST Act, 2017. The said Section 22(1) is extracted below for ready reference:
- 22. (1) Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees:*
- Provided that where such person makes taxable supplies of goods or services or both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees.*
- 4.2. In the present case, the applicant submits that, the applicant does not make any taxable supplies so as to be liable for registration under the provisions of Section 22(1) of the CGST Act, 2017.
- 4.3. Further, since the applicant is not engaged in carrying out business as defined under Section 2(17) of the CGST Act, 2017, the other provisions and rigors of the CGST Act shall not be applicable to the applicant.

Additional submission on 25.06.2018

We appeared before learned ARA on 13.06.2018. The final hearing was completed and we were directed to file certain remaining details by 25.06.2018. Accordingly we are submitting following details

1. Copy of Trust Deed translated in English
2. In Maharashtra, we have following activities.
 - (a) Entry to Satsang in Prayer hall is free to all.
 - (b) Sale of cassettes, CD and other Puja Samagri etc.
3. Judgment of Hon. Bombay High Court in case of Lalbaugcha Raja Sarawajanik Geneshotsav Mandal (MVXA Tax Appeal No.10 of 2015 dt. 28.6.2015)
4. Costing of major items sold
As mentioned earlier, we have no formal costing system. We herewith attach the sheet showing costing of major items which is prepared as per purchase cost and the applicable administrative cost.
5. In the hearing, the learned ARA asked about applicability of term 'Trade' to the selling activity of Trust.

We have already cited judgment of Hon. Supreme Court in case of Sai Publication Trust (126 STC 288) (SC). In this case the definition of 'business' under BST Act was for interpretation which is also reproduced in the judgment. The said definition is as under:

"Section 2(5A): 'business' includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure or concern; and any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern; and any transaction in connection with, or incidental or ancillary to, the commencement or closure of such trade, commerce, manufacture, adventure or concern;"

In this definition also the term 'Trade' was there and Hon. Supreme Court has observed in para 17 as under about the meaning of 'trade':

"17. This decision is directly on the point supporting the case of the respondent after noticing a number of decisions on the point including the decisions cited by the learned counsel before us. It may be stated that the question of profit-motive or no profit-motive would be relevant only where person carries on trade, commerce, manufacture or adventure in the nature of trade, commerce, etc. On the facts and in the circumstances of the present case irrespective of the profit-motive, it could not be said that the Trust either was "dealer" or was carrying on trade, commerce, etc. The Trust is not carrying on trade, commerce, etc., in the sense of occupation to be a "dealer" as its main object is to spread message of Saibaba of Shirdi as already noticed above. Having regard to all aspects of the matter, the High Court was right in answering the question referred by the Tribunal in the affirmative and in favor of the respondent-assessee. We must however add here that whether a particular person is a "dealer" and whether he carries on "business" are the matters to be decided on facts and in the circumstances of each case."



Thus, in relation to Trust if the main occupation is not Trade, but spread of spiritual message and incidentally the materials spreading such message is being sold, it is not a trade or business.

To the similar effect is also the judgment of Hon. Bombay High Court in case of Commissioner of Sales Tax vs. Cutchi Dasha Oswal Mahajan Udyog Committee (36 STC 1) (Bom). In this also, the Charitable Trust was employing destitute women for preparing the eatables and such eatables were sold at market price. Hon. High Court has held that such activity is for carrying out of main object of helping poor and needy women therefore even if sale is at profit and at normal rate still it will be incidental activity and not business. Applicant's case is covered by above ratio.

Though normal meaning of 'trade' can include buying and selling goods, still in case of above applicant, it will not fall in the definition of 'business' as the main object of the Trust is not business.

6. We also bring to kind knowledge the clause 26 in the Trust Deed which says that in case this Trust is not able to carry on activities as per objectives of the Trust then the Trust should be amalgamated with Trust having similar objectives. Thus, there is no business approach of the Trust and all activities are for charitable object.

7. In the hearing, reference was made that there is exemption entries in relation to services carried out by Trust. However, such exemption may be given for the Trust who are in business and the law wants to exclude the given services. In any case, giving exemptions etc., cannot govern the definition clause of 'business'. Unless the entity falls within the meaning of 'business' it cannot be subjected to tax based on any other criteria.

8. Applicant submitted the details of main objectives of the trust and few sale of costing on 25.6.2018 as under.

| | |
|---------------------|---|
| Name of the Trust | Shrimad Rajcharcra Adhyatmik Satsang Saanana Kendra (SRASSK) |
| Regd. Address | Shrimad Rajchandra Ashram, Mohangadh, Dharampur -396050 Dist. Valsad Gujarat, India |
| Mumbai (Adm.) Add. | Bhupati Chambers, Third Floor, Plot - 13, Padmakar L Khandke Marg, Mathew Road, Opera House, Mumbai - 400004 Currently Trust has administrative office in Mumbai with a hall for prayer and for discourse to be given by Gurudev during group meetings. Registered with sales tax department due to deeming provision under MVAT Act but it was not regd. With GVAT as in Gujrat there was specific exemption for Charitable Trust not carrying any commercial activity. |
| Status | Charitable & Religious Trust regd. u/s 12AA of the Income Tax Act, since last 23 years and with charity Commissioner Gujrat. Trust does not have any computation of business income. |
| Object of the Trust | <u>Extract from the Trust Deed (In English)</u> <u>Para no. 8) Objectives of the Trust</u> <u>Fundamental objectives of the Trust - Spiritual Activities</u> The fundamental objectives of this Trust is to carry out, get carried out and support spiritual activities such as 'Satsang' (association with saints or gentlemen), worshiping and meditation for the final salvation in such a manner that the persons from all castes desirous of salvation attains salvation and their unique devoutness to Eternal 'Vitrag' Path Leading, Most Compassionate Pramkrupalu Shrimad Rajchandraji increases by following His commandments, gaining faith and sentiment towards the mode of obtaining salvation taught by 'Tirthankar' Bhagvan Shree Mahavir Swami and 'Vitrag' Prabhu and famous as Jain Religion in the world and by becoming non-attached to worldly things or happiness. <u>Other Objectives of the Trust: (Relevant Extract)</u> <u>1) Social Services, public Aids and Religious Activities</u> |



| | | | |
|---|--|----------------------|----------------------|
| | <p>To carry out, get carried out and support activities which uplifts peoples social, wordly, economic conditions and religious activities such as 'Swamivatsalya', 'Sadharmik', Devotion, Pilgrimage, Sadhak Samadhi' Funds etc. and to make disposition of the same and to carry out, get carried out and support activities related to the same which may be necessary to attain the above mentioned fundamental objectivities.</p> <p><u>2) Activities of spreading the knowledge</u></p> <p>To print, publish or get printed, published the constructive scriptures and religious books for the education of such kind of knowledge which Trustees may deem proper.</p> | | |
| The Main Activities | <ul style="list-style-type: none"> • Spiritual masters and renowned scholars are invited to speak on the scriptures of different religious thus endowing the seekers with their knowledge • Various external organizations are invited to conduct courses on meditation techniques. • Various training programmers are conducted for the self-development of seekers. • Carrying Humanitarian and spiritual activity. • Attending Satsang is free of cost. | | |
| Incidental / Ancillary Activities | Connected, Incidental or ancillary support activities for spreading the spiritual / religious education, trust also sales spiritual / religious products like Satsang / Bhakti CD/DVD, spiritual books Satsang Booklets, Magazine etc. | | |
| Nature of Products & Cost thereof | Ref. to the object clause | Cost per Unit Rs. | Sale Per Unit Rs. |
| SHRIMAD RAJCHANDRA VACHANAMRUTJI (IN GUJ) Scriptures & commandments of Shrimad Rajchandraji | Fundamental objectives -Spiritual | 228.88 | 225.00 |
| PUSHPMALA Booklet of Do's & Don'ts (Practice booklet by Shrimad Rajchandraji | Fundamental objectives -Spiritual | 14.92 | 15.00 |
| SADGURU ECHOES Monthly Magazine | Other objectives - Activities for spreading the knowledge. | 43.94 | 35.00 |
| VIVEKCHUDAMANI SHIBIR - 11-DVD Discourse by Gurudev on selected Granth/ Scripture (Full one year set will include 12 DVD) | Other objectives - Activities for spreading the knowledge. | 412.52 | 400.00 |
| VIVEKCHUDAMANI SHIBIR - 11 MP3 Discourse by Gurudev | Other objectives - Activities for spreading | 89.19 | 75.00 |



on selected Granth /
Scripture (Full one year
set will include 12
MP3)

the knowledge.

03. CONTENTION - AS PER THE CONCERNED OFFICER AS BELOW.

The dealer was a registered dealer under MVAT ACT 2002 having Constitution of the Business Public Trust and the Business Activity - Trading.

The dealer have effected interstate purchases as well as Branch Transfer. The dealer have also deducted TNCT TDS in 2013-14 & 2015-16.

- 1) Whether the applicant which is a charitable trust with the main object of advancement of religion, spirituality or yoga can be said to be in business so as to attract the provisions of Central Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017?

Please refer the Explanation Note issued to the Notification No.12/2017- Central Tax (Rate) dated 28th June 2017 by Directorate General of Tax payer Services Central Board of Excise and Customs. The Notes states -

GST on supply of goods by Charitable Trusts -

"There is no exemption for supply of goods by Charitable Trusts. Thus any goods supplied by such Charitable Trusts for consideration shall be liable to GST. For instance sale of goods shall be chargeable to GST".

The dealer is engaged in supply of goods under GST. The dealer is holding a stock of goods as 31/03/2017 at Rs. 15882218/- (which is supposed to sale/supply under GST Act) The year wise details of income /consideration received from sale of goods (Spiritual Products) in previous years is as under -

2016-17 - Rs. 4359967/-

2015-16 - Rs. 4972259/-

2014-15 - Rs. 4481415/-

2013-14 - Rs. 3926341/-

Further the dealer have provided accommodation and food in various Shibirs/Satsang for consideration. The details of Shibir and stay income areas under -

2016-17 - Rs. 51910491/-

2015-16 - Rs. 78042209/-

2014-15 - Rs. 32815747/-

Further the dealer also effected additions and sale of capital assets. The year wise details are as under -

| Financial year | 2016-17 | 2015-16 | 2014-15 |
|----------------------|-----------|-----------|-----------|
| Furniture & Fixture | | | |
| Addition during year | 1100992/- | 4273725/- | 1768859/- |
| Sale during the year | 641009/- | 1650006/- | 1723291/- |
| Equipment | | | |
| Addition during year | 8514707/- | 6072185/- | 2686859/- |
| Branch Transfer | 0 | 0 | 52000/- |
| Sale during the year | 586114/- | 1792741/- | 1723291/- |
| Computers | | | |
| Addition during year | 397493/- | 470493/- | 136985/- |
| Sale during the year | 220500/- | 0 | 183839/- |

Further the dealer have also deducted TDS on works contracts and issued TDS Certificates in Form



2) Whether the applicant which is a charitable trust with main object of the advancement of religion, spirituality or yoga is liable to registration under the provisions of Central Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017?

Please refer to the provisions made under section 22, 23 and 24 of Maharashtra Goods and Service Tax Act 2017 and Central Goods and Service Tax Act 2017.

Sec - 22 "(1) Every supplier making a taxable supply of goods or services or both in the state/Union Territory shall be liable to be registered under this act if his aggregate turnover in a financial year exceeds twenty lakh rupees: provided that where such person makes taxable supplies of goods or services or both from any of the special category states, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees.

In this case the dealer is holding a stock of goods as on 31.03/2017 at Rs.15882218-(which is supposed to sale/supply under GST Act) and year wise turnover in previous years is as under

| Financial Year | Amount |
|----------------|-----------|
| 2016-17 | 4359967/- |
| 2015-16 | 4972259/- |
| 2014-15 | 4481415/- |
| 2013-14 | 3926341/- |

Section 23 refers about the persons not liable for registration

(1) The following persons shall not be liable to registration, namely:-

- (a) Any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from the tax under this Act or under the Integrated Goods and Services Tax Act;
- (b) An agriculturist, to the extent of supply of produce out of cultivation of land

(2) The Government may, on the recommendations of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this Act.

As the above charitable trust is not falling in any of the above category. He is liable to Registration under the provisions of Central Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act 2017.

Further the provisions under section 24 are applicable to compulsory registration in certain cases 4. Compulsory registration in certain cases -

Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act, -

- (i) Persons making any inter-State taxable supply ;
- (ii) Casual taxable persons making taxable supply ;
- (iii) Persons who are required to pay tax under reverse charge ;
- (vi) Persons who are required to deduct tax under section 51, whether or not separately registered under this Act ;

(vii) such other person or class of persons as may be notified by the Government on the Recommendations of the Council.



In view of the above provisions under section 22, 23 and 24 the above Charitable Trusts is liable to Registration under the provisions of Central Goods and Service Tax Act 2017 and Maharashtra Goods and Service Tax Act 2017.

3) Whether sales of spiritual products which is incidental / ancillary to main charitable object of the applicant can be said to be business of the applicant in terms of the definition in Section 2(17) of the Central Goods and Service Tax Act 2017 and option provision of Maharashtra Goods and Service Tax Act 2017?

The above charitable trust is engaged in supply of products namely -

KumKum (tax free), wooden desk/wooden chitrapat stand (taxable), DVD/CD (taxable), Books (tax free), Agarbatti/Incense stick (taxfree), Counter /timepiece (taxable), periodicals (taxfree), Mala, diary, calendar, Greeting card (taxable), statue (taxable), Shri Raj Charan (Holy Feet)/gist articles/stickers/plastic covers/box covers (taxable)

4) Whether the sale of spiritual products can be said to be supply under Section 7 of the Central General Sales Tax Act, 2017 and equivalent provision of the Maharashtra Goods and Service Tax Act, 2017 so as to attract GST?

Please refer Sec. 7 of the Central Goods and services Tax Act 2017

LEVY AND COLLECTION OF TAX

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

04. HEARING

The Preliminary hearing in the matter was held on 11.04.2018, Sh. Rahul Thakkar, Advocate along with Sh. Nilesh Parekh Office bearer and Sh. Hemal Ashra, C.A. (Auditor of Trust) and Sh. C. B. Thakkar Advocate appeared and requested for admission of application as per contentions made in their ARA. They were specifically requested to give the costing of the items which are being sold by them as detailed in their catalogues. Jurisdictional Officer Sh. Vikrant Gaikwad, Asstt. Commr. Of S.T. (D-836), Nodal -3, Mumbai appeared and stated they would be making written submission shortly.

The final hearing was held on 13.06.2018, Sh. C.B. Thakkar, Advocate, Sh. Nilesh Parekh Office bearer and Sh. Hemal Ashra, C.A. (Auditor of Trust) appeared and made oral contentions that they had not submitted the costing of items as requested during Preliminary hearing. They stated that they would be giving costing of 5 to 7 items having higher values along with their further written submissions. They requested that they want to make further submissions and requested that a date for further submissions till 25.06.2018 may be granted to them. Their request was granted. Jurisdictional Officer Sh. Vikrant Gaikwad, Asstt. Commr. Of State Tax (D-836), Nodal -3, Mumbai appeared and made written submissions.

Sh. C. B. Thakkar, Advocate made further written submissions as per their request on 25.06.2018.



05. **OBSERVATIONS**

We have gone through the facts of the case. it is observed that thus,

1. Shrimad Rajchandra Adhyatmik Satsang Sadhana Kendra (hereinafter referred to as "applicant") is a public charitable and religious trust engaged in advancement of the teachings of Param krupaludev Shrimad Rajchandra and spreading the knowledge of Jain Religion entrusted by Shri Mahavir Swami and other Tirthankars.
2. Applicant submitted that the main object of the applicant trust is to spread the knowledge of the Jain Dharam and advancement of teachings of Param krupaludev Shrimad Rajchandra.
3. Applicant further submitted that the ancillary and incidental objects of the applicant trust are to carry out activities for advancement of main object such as Satsang, Shibirs, etc. To spread knowledge of the Jain Dharam through publications of books, audio CDS, DVDs, etc. and other materials for students and public in general and to set up organizations for helping people. The ancillary object also includes, protecting birds and animals from being killed in slaughter houses and other activities.

For all above the applicant submits that, the applicant is a public charitable trust with main objective of advancement of religious and spiritual teaching and are not engaged in any trade or commerce etc. As such it cannot be said to be business in commercial sense as defined in section 2(17) of the GST Act. They further submit that as the main activity cannot be considered as business, the ancillary or incidental activity, of selling spiritual products such as booklets, magazine, DVD and MP3 cannot be considered as business. In order to examine the submissions made by the applicant it is necessary to reproduce the definition of business as below -

2(17) "business" includes--

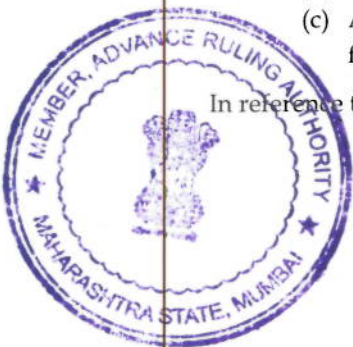
- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
- (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
- (f) admission, for a consideration, of persons to any premises;
- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- (h) services provided by a race club by way of totalisator or a licence to book maker in such club; and
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

We find that there is no doubt that applicant Trust is a person as defined u/s 2(84) of the GST Act. We are first required to ascertain as to whether the applicant is carrying out any business or not.

We find that as per details above 'business' is defined under GST Act under Section 2(17). As per this definition we are required to have a relook at details as given under sub clause (a), (b) and (c) of Section 2(17) which states that business includes:-

- (a) Any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity whether or not it is for pecuniary benefit.
- (b) Any activity or transaction in connection with or incidental or ancillary to sub clause (a).
- (c) Any activity or transaction in the nature of sub clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction.

In reference to the above, we find that the word 'trade' as per Dictionary has meanings as under:-



As a noun it means

---the buying or selling of goods or services between people or countries.

---a particular type of business.

As a verb it means

---to buy or sell goods or services.

---to exchange something for something else.

As per Collins Dictionary, 'trade' is an activity of buying, selling or exchanging goods or services between people, firms or countries. When people, firms or countries trade, they buy sell or exchange goods or services between themselves.

Further as per business dictionary we find that Trade is a commercial transaction involving sale and purchase of a good, service or information.

In the same way we find that Wikipedia states that Trade involves the transfer of goods or services from one person or entity to another, often in exchange for money.

Thus we find that the above are the definitions of trade as per general understanding as well as per business understanding.

In the same way the word 'Commerce' has several definitions which are as under:-

As a noun

It means business of buying and selling things.

As per Business Dictionary, it means exchange of goods or services for money or in kind, usually on a large scale enough to require transportation from place to place or across city, state or national boundaries.

Similarly we find that Wikipedia defines it as "exchange of goods and services, especially on a large scale."

In view of the above definitions, now we examine the activities that are being undertaken by the applicant.

We find that the applicant in their submissions have stated that they sell various spiritual products (Annexure-6) such as Books, Audi CDs, DVDs, Statues and Calendars which are for advancement of religious teachings of Paramkarpalu Shrimad Rajchandra.

Further we find that the jurisdictional officer in his submissions has stated that the applicant is engaged in sale of goods or providing of services which are as under:-

"The dealer is engaged in supply of goods under GST. The dealer is holding a stock of goods as 31/03/2017 at Rs. 15882218/-. The year wise details of income /consideration received from sale of goods (Spiritual Products) in previous years is as under -

2016-17 - Rs. 4359967/-

2015-16 - Rs. 4972259/-

2014-15 - Rs. 4481415/-

2013-14 - Rs. 3926341/-

Further the dealer have provided accommodation and food in various Shibirs/Satsang for consideration. The details of Shibir and stay income areas under -

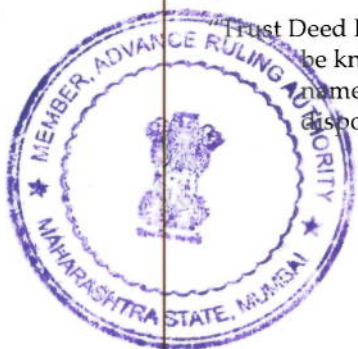
2016-17 - Rs. 51910491/-

2015-16 - Rs. 78042209/-

2014-15 - Rs. 32815747/-

Further with respect to the activities of the applicant, we find the below given details from their trust deed paras extracted from the copy of Trust Deed translated in English submitted by them.

Trust Deed Para 5, ---This Trust is created as 'Public Charitable and Religious Trust and the said Trust shall be known as "Shrimad Rajchandra Adhyatmik Satsang Kendra" and the Trustees shall give the said name to the Trust and manage the Trust by the said name and they shall administer, make disposition and use the property as per this Trust Deed.



Para 7-The party of the second part, the Trustees, shall make disposition and investment of the aforesaid property as follows:

The aforesaid Trust Property can be invested in the investments approved under the The Bombay Public Trust Act, 1950 and The Income Tax Act, 1961 and the immovable and movable properties and the income thereof can be used in the Trust. Subject to the prevailing law, the Trustees shall have absolute authority to buy the securities and to sell the purchased securities and to buy other securities from out of the sale proceeds of the securities or to transfer or to exchange the same and if the company issues new rights shares against the previous shares, then to buy the shares by taking money in respect thereof from the Trust Properties. And the Trustees shall have absolute right, if they deem proper, to take on Live License and on long lease or purchase immovable property at any part of India from out of the money of the 'Trust Property' and to sell the purchased or Live License or leased property and to invest the said sale proceeds in such securities or immovable or movable property that may come into consideration of the Trustees as well as to out the immovable property. And the Iris Shall have absolute right and authority to sign the live License or the lease or Sale Deed for the said purpose and to take or give the same by getting registered as per the law and to sign and issue the lawful receipt on behalf of the Trust after collecting the sale proceed and if any loss suffered in making investment or buying and selling in this manner or there is any decline in the value of the securities, then the Trustees or any Trustee from out of them shall not be responsible for the same.

Para - (8) OBJECTIVES OF THE TRUST

Fundamental objectives of the Trust - Spiritual Activities

The fundamental objectives of this Trust is to carry out, get carried out and support spiritual activities such as 'Satsang' (association with saints or gentlemen), worshiping and meditation for the final salvation in such a manner that the persons from all castes desirous of salvation attains salvation and their unique devoutness to Eternal 'Vitrag' Path Leading, Most Compassionate Paramkrupalu Shrimad Rajchandraji increases by following HIS commandments, gaining faith and sentiment towards the mode of obtaining salvation taught by 'Tirthankar' Bhagvan Shree Mahavir Swami and Vitrag Prabhu and famous as Jain Religion in the world and by becoming non-attached to worldly things or happiness.

Other Objectives of the Trust:-

(1) Social Services, Public Aids and Religious Activities

To carry out, get carried out and support activities which uplifts people's social, worldly, economic conditions and religious activities such as 'Swamivatsalya', 'Sadharmik", Devotion, Pilgrimage, Sadhak Samadhi' Funds etc. and to make disposition of the same and to carry out, get carried out and support activities related to the same which may be necessary to attain the above mentioned fundamental objective.

(2) Activities of spreading the knowledge

To print, publish or get printed, published the constructive scriptures and religious books for the education of such kind of knowledge which Trustees may deem proper for the activity of the welfare of all the human beings and for its expansion etc. and to establish such institutions which may be deemed proper and to run the classes or to extend financial help such knowledge giving institutions and to financially help such pupils are recommended by the Trust or besides pupils. Even such persons who are fit to take such knowledge, by making provision in writing as per the law to admit and educate them in such institution

(3) Activities for the kindness to all living beings

To carry out activities for the kindness to all living beings such as to stop the beasts and birds taken to slaughter house, to free them from there, to rear them in Panjrapol', birds asylums etc. for the endurance of their lives after releasing them from there.

No portrait, photo, statue, symbol, plaque, monuments, Samadhi , museum or anything or article, except of Shree Vitrag Prabhu and Most Compassionate Shrimad Rajchandraji and the persons associated with the incidents occurred during HIS life-time, also existing Sadgurudev Pujya Gurudevshri Rakeshbhai Zaveri will not be allowed to be kept in the immovable and movable property acquired by purchasing, constructing, gift or any other manner for achieving the above mentioned objectives and considering to be the ownership of the institution and which may be



handed over in the possession of the institution. But in the tradition of Pujya Gurudevshri Rakeshbhai Zaveri future Dharmgurus, Ashram Leaders, Saints, Spiritual Men or Jain/ Other religion's Gods, Saints, Dharmgurus, or other Great Men's portrait, photo, statue, symbol, plaque, monuments, Samadhi, museum or anything or article can be kept with the consent of 2/3 Majority of the total Trustees of that time.

Para (16). Receipt signed by any two Trustees or whom the Trustees appoints as the Authorized Signatory for the collecting interest on the Trust Property or for whatever amount that may receive for the Trust by donation, gift or any manner, shall be valid and binding to the Trust.

Para (20). Subject to the law, the Trustees shall have absolute right and authority to sell the Trust Property by public auction or private negotiation, to let out on long lease, to transfer, change, exchange or to make disposition or transfer in such a manner as may come into consideration of the Trustees etc. and they shall have absolute right to sign on behalf of the Trust on such documents which may be required to be prepared in respect thereof, to get or give them same registered and to undertake such proceedings which may be required to complete the said works and they shall also have absolute right to get prepared the necessary documents after giving consideration in respect thereof and they shall have absolute right to collect the sale proceeds and to issue receipt in respect thereof."

Now in view of the detailed submissions of the applicant, submissions of the jurisdictional officer, relevant paras of Trust Deed and detailed related discussions above, we examine the scope of supply as per Section 7 of the CGST Act which is as under:-

Section 7 of CGST Act, 2017: -

(1) For the purposes of this Act, the expression "supply" includes--

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(b) import of services for a consideration whether or not in the course or furtherance of business;

(c) the activities specified in Schedule I, made or agreed to be made without a consideration; and

(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

(2) Notwithstanding anything contained in sub-section (1),--

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,

shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of sub-sections (1) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as --

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods.

In view of the above detailed discussions it is very apparent that the applicant is engaged in Trade and Commerce by way of selling of goods and services as per detailed discussions above and are very well covered under the definition of 'business' as given under Section 2(17) of the CGST Act and in view of this, their activities are very well covered within the scope of 'supply' as given in Section 7 of the CGST Act, 2017 and are therefore liable to tax as applicable in respect of goods supplied or services rendered.

Now we refer to their claim for exemption as per they being a charitable trust. We find that the Charitable Trust must satisfy the following two criteria: to avail exemption from payment of GST in case of services.



There is no exemption granted to charitable trusts in case of supply of goods which are taxable and are not specifically exempt or nil rated. In case of service tax exemption, a charitable trust is required to comply with below mentioned criteria:-

- i) The entity must be registered under section 12AA of the Income Tax Act.
- ii) The services provided by the entity must be a charitable activity.

Under the GST Act, not all services provided by a Trust registered under Section 12AA would be termed as a charitable activity. Only the following activities are termed as charitable activity and are exempt from GST:

- Services relating to public health like:
 - Care or counseling 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;
- Public awareness of preventive health, family planning or prevention of HIV infection;
- Advancement of religion, spirituality or yoga;
- Advancement of educational programs or skill development relating to:
 - Abandoned, orphaned or homeless children;
 - Physically or mentally abused and traumatized persons;
 - Prisoners; or
 - Persons over the age of 65 years residing in a rural area;

Preservation of environment including watershed, forests and wildlife.

We find that the applicant is registered under Section 12AA of the Income Tax Act but the activities being undertaken by the applicant in respect of services being provided by them are not covered under the definition of charitable activities.

From the information provided by the concerned Officer/ Jurisdictional officer, we see that applicant trust generates income from sale of goods, provides for accommodation and foods in various Shibir/Satsang on payment/chargeable basis. The Charitable Trust organize Shibir/Satsang for participant and they are not free for the participants, as the trust charge some amount from the participants in the name of accommodation or participation. Satsang is the only activity provided by the applicant free of cost to the participant. As such arranging residential or non-residential Satsang /Shibir/yoga camps by accepting/charging some amount from the participants will not be covered under "charitable activities" within the meaning of definition provided at Definitions at 2 (r) of notification No. 12/2017 Central Tax (Rate) dated 28/06/2017 of the expression charitable activities and in particular advancement of religion, spirituality or yoga.

Applicant has submitted different case laws mention of which is already made herein above. Since we have come to the conclusion that the activities carried on by the applicant is in the nature of business as defined u/s 2(17) of the GST Act and further considering the GST Regulations that all services provided by the religious trusts and charitable institutions are not exempt from tax and the various case laws referred by the applicant are in different context and therefore cannot be considered and relied upon in the facts of the present case.

In view of the deliberations as held herein above, we pass an order as follows:



ORDER

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 41/2017-18/B-

48

Mumbai, dt.

14/6/2018

For reasons as discussed in the body of the order, the questions are answered thus -

Question 1:- Whether the applicant which is a charitable trust with the main object of advancement of religion, spirituality or yoga can be said to be in business so as to attract the provisions of Central Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017?

Answer: - Answered in affirmative.

Question 2:- Whether the applicant which is a charitable trust with main object of the advancement of religion, spirituality or yoga is liable to registration under the provisions of Central Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017?

Answer: - Answered in affirmative provided that aggregate turnover in a financial year exceeds limit prescribed u/s 22 of the GST Act.

Question 3:- Whether sales of spiritual products which is incidental / ancillary to main charitable object of the applicant can be said to be business of the applicant in terms of the definition in Section 2(17) of the Central Goods and Service Tax Act 2017 and option provision of Maharashtra Goods and Service Tax Act 2017?

Answer: - Answered in affirmative.

Question 4:- Whether the sale of spiritual products can be said to be supply under Section 7 of the Central General Sales Tax Act, 2017 and equivalent provision of the Maharashtra Goods and Service Tax Act, 2017 so as to attract GST?

Answer: - Answered in affirmative.



—sd—
B. V. BORHADE
(MEMBER)

—sd—
PANKAJ KUMAR
(MEMBER)

CERTIFIED TRUE COPY

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai

MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai - 400021