

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

**GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.
(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)**

BEFORE THE BENCH OF

(1) Shri. Rajiv Magoo, Additional Commissioner of Central Tax, (Member)

(2) Shri. T. R. Ramnani, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id		27AAATK2046G1ZV
Legal Name of Applicant		M/s. KASTURBA HEALTH SOCIETY
Registered Address/Address provided while obtaining user id	KASTURBA HEALTH SOCIETY SEVAGRAM ROAD SEVAGRAM, VARDHA - 442102	
Details of application		GST-ARA, Application No. 120 Dated 04.02.2019
Concerned officer		Division Kalmeshwar, Commissionerate Nagpur – II.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Service Provision
B	Description (in brief)	The Applicant [KASTURBA HEALTH SOCIETY], is an institution Registered under the Registration of Societies Act, 1860 and also under The Bombay Public Trust Act, 1950 existing solely for imparting medical education till post-graduation, which is a Joint Venture having funding from Central Government @ 50%, State Government @25% and remaining 25% comes mainly by way of fees from students and recoupment charges from patients [essentially clinical material]. The Medical College is named as "MAHATMA GANDHI INSTITUTE OF MEDICAL SCIENCES" and its Clinical Laboratory is named as "KASTURBA HOSPITAL". The institution has a set up at village Sevagram.
	Issue/s on which advance ruling required	<ul style="list-style-type: none"> ➤ classification of goods and /or services or both. ➤ applicability of a notification issued under the provisions of the Act. ➤ determination of the liability to pay tax on any goods or services or both. ➤ whether applicant is required to be registered under the Act. ➤ 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 01 of the Proceedings below.

NO.GST-ARA- 120/2018-19/B- **90**

Mumbai, dt. **10.11.2021**

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 M/s. **KASTURBA HEALTH SOCIETY**, the applicant, seeking an advance ruling in respect of the following questions.

- *Whether the applicant, a Charitable Society having the main object and factually engaged in imparting Medical Education, satisfying all the criteria of "Educational Institution", can be said to be engaged in the business so as to cast an obligation upon it to comply with the provisions of Central Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017 in totality.*
- *Whether the applicant, a Charitable Society having the main object and factually engaged in imparting Medical Education, satisfying all the criteria of "Educational Institution" is liable for registration under the provisions of section 22 of the Central Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017 or it can remain outside the preview of registration in view of the provisions of section 23 of the said act as there is no Taxable supply.*
 - i. *In a situation if above questions are answered against the contention of the applicant institution then following further questions are being raised for the kind consideration by the Honourable Bench.*
 - a. *Whether the fees and other charges received from students and recoupment charges received from patients (who is an essential clinical material for education laboratory) would constitute as "outward supply" as defined in section 2 (83) of The Central Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017 and if yes then whether it will fall in classification entry at Sr. No 66 or the portion of nominal amount received from patients (who is an essential clinical material for education laboratory) at Sr. No. 74 in terms of Notification 12/2017 Central Tax-dt. 28/6/2017.*
 - b. *Whether the cost of Medicines and Consumables recovered from OPD patients along with nominal charges collected for Diagnosing by the pathological investigations, other investigation such as CT-Scan, MRI, Colour Doppler, Angiography, Gastroscopy, Sonography during the course of diagnosis and treatment of disease would fall within the meaning of "composite supply" qualifying for exemption under the category of "educational and/or health care services."*
 - c. *Whether the nominal charges received from patients (who is an essential clinical materials for education laboratory) towards an "Unparallel Health Insurance Scheme" to retain their flow at one end for the purpose of imparting medical education as a result to provide them the benefit of concessional rates for investigations and treatment at other end would fall within the meaning of "supply" eligible for exemption under the category of "educational and/or health care services."*
 - d. *Whether the nominal amount received for making space available for essential facilities needed by the students and staffs such as Banking, Parking, and Refreshment which are support activities for attainment of main activities and further amount received on account of disposal of wastage would fall within the meaning of "supply" qualifying for exemption under the category of "educational and/or health care services."*

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 any 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, the expression 'GST Act' would mean CGST Act and MGST Act.

2. FACTS OF THE CASE:

- 2.1 The applicant filed application for Advance Ruling on 04.02.2019 in respect of the questions mentioned above. The Advance Ruling application was disposed of, by this authority, vide



Order dated 04.05.2019. The Advance Ruling authority in the said order held that, the applicant Trust and MGIMS are two separate entities and that the application should have been filed by MGIMS and not the applicant Trust. Therefore, the questions raised by the applicant were not answered. Against the order passed by this authority, the applicant preferred an appeal before the Appellate Authority for Advance Ruling, Maharashtra State. The Appellate Authority vide its Order dated 13.12.2019 upheld the order passed by this authority. Further to this, the applicant filed a Writ Petition No. 1745 of 2020 before the Hon'ble High Court of Judicature at Mumbai against the order of the Appellate Authority mentioned above. The Hon'ble High Court in its order dated 30/8/2021 observed and directed as under:

"We find that these orders do not answer the basic question raised by the petitioner-society. The question raised by the petitioner-society was as to whether or not, the petitioner-society, on its own strength and in its own right, could be said to be entitled to seek exemption from the requirement of registration and also discharge of Goods and Service Tax liability The authorities ought to have considered this contention independently of the activity of MGIMS and in the light of the manner in which the aims and objects of the society is fulfilled by the petitioner-society. Such exercise having not been done by the authorities below and no findings on these lines having been rendered by both the Authorities, we are of the view that both the orders, as rightly submitted by the learned counsel for the petitioners, are erroneous and cannot stand to the scrutiny of law. The question posed by the petitioner-society in respect of which Advance Ruling was solicited, must be answered specifically by these Authorities.

In view of the directions passed by the Hon'ble High Court, the issues are being dealt afresh in present Advance Ruling order.

03. **CONTENTION – AS PER THE CONCERNED OFFICER**

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

3.1 **Question No. 1 (Comments):-**

In view of Notification No. 12/2017-Central Tax (Rate) dated: 28.06.2017 (Sr. No. 66/74), Notification no, 09/2017-Integrated tax (rate) dated 28.06,2014 (Sr. No. 77) and Circular No. 32/6/18-GST dated 12.02.2018 (Sr. No. 5), it is observed that the services rendered by an educational institution to its students, faculty and staff etc. and the health care services provided by a clinical establishment, an authorised medical practitioner or para-medics are exempted from payment of GST. However, as per above mentioned circular it is clarified that the food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare and not separately taxable but other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable.

3.2 **Question No. 2 (Comments):-**

*As per the above mentioned notifications and circulars it is noticed that the services rendered by an educational institution to its students, faculty and staff etc. and the health care services provided by a clinical establishment, an authorised medical practitioner or para-medics are exempt from payment of GST. While **services provided by an educational Institution** are out of the GST ambit, the same is not the case with **services provided to an educational institution**. The GST exemption on services provided to an educational institution is available only to schools (from pre-school up to higher secondary school or its equivalent). Hence, the 'input' or supply of services such as transportation, catering, housekeeping, services relating to admission or conduct of examination to higher educational institutions will bear GST levy.*

Similar is the case of Services on which GST is to be paid on reverse charge mechanism. Further the taxpayers who are liable to pay the tax shall be liable to be registered under this Act. In the instant case, thus it appears that the services not covered under the purview of educational services or health care services are taxable. E.g. food services [i.e, other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable], the amount received for renting of space for banking, parking and refreshment and amount received on account of disposal of wastes would fall within the meaning of supply. Therefore, they are required to be registered under this act.

3.3 Question No. 3 (Comments) :-

In view of provisions Section 22 & 23 of the CGST Act, 2017, in the instant case it appears that the services not covered under the purview of educational services or health care services, are taxable. E.g. food services [i.e, other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable], the amount received for renting of space for banking, parking and refreshment and amount received on account of disposal of wastes would fall within the meaning of supply. Therefore, they are required to be registered under this Act.

04. HEARING

4.1 The case was heard on 14/9/2021, as per the directions of the Hon. High Court. Shri Rajendra Bhutada, learned CA attended and argued the case for the applicant. The jurisdictional officer was absent. The applicant made written submissions, during fresh hearing, as under:

BRIEF BACKGROUND:

4.2 Applicant, KASTURBA HEALTH SOCIETY (KHS), registered under the Societies Registration Act, 1860 and The Bombay Public Trust Act, 1950, exists solely for imparting the Medical Education, till Post Graduation. The Society has named its activity of Medical College as "MAHATMA GANDHI INSTITUTE OF MEDICAL SCIENCES" (MGIMS) and Clinical Laboratory as "KASTURBA HOSPITAL". The entire activity as a whole is funded by Central Government @50 %, State Government @25 % and remaining 25% is derived as IRG in form of Fess from Students and Nominal Charges from Patients.

4.3 The applicant society since solely engaged in Education and there being no business activity was not obliged to get registered under the erstwhile Bombay Sales Act, 1959, MVAT Act, 2002 as well as Service Tax Act, on account of specific exclusions therein.

4.4 After introduction of GST applicant's Suppliers, Vendors, Transporters and Service Providers were pressurising Applicant to provide it's GST Registration Number and without such number even transporters were not ready to carry the essential material needed for hospital. Therefore, in order to overcome these issues, the society has applied for **voluntary registration** and got registered with effect from **21st July 2017**.

4.5 Since the Applicant bonafidely believed that none of its activity was in the nature of "business" U/S 2(17) and "supply" U/S 2(87) of the GST Act and therefore it was not obliged to comply with the provisions of GST Act and had not filed the returns, the jurisdictional GST authorities issued notices directing applicant to file GST returns. When enquired with peers it was revealed that either they are not registered or those who obtained the registration cancelled the same and even the Department did not question such cancellation.

4.6 In view of this fact the Applicant approached the AAR and AARA and aggrieved with the orders passed by the said authorities, approached Jurisdictional Bombay High Court through Writ Petition where the Court set aside the order of ARA and AARA remanded the matter back for fresh consideration and appropriate decision, in accordance with law.



- 4.7 The applicant is engaged in imparting medical education and its activity was never in the nature of business therefore there did not obtain registration under the Bombay Sales Tax Act, VAT Act and Service Tax Act. This contention of applicant is squarely covered by the Judicial pronouncements already submitted on record in detail submission which are even equally applicable under GST since it has set out certain principles.
- 4.8 Even the GST Act is also not making any departure from the basic concepts those existed having applicability in earlier law which is evident from the scope of Section 2(17) of The CGST Act defining "Business" that gives the context to the above-mentioned term just like in earlier Tax laws, where the effective tax to be paid is always on business transaction. Further as per Section 2(83) of MGST/CGST only commercial transactions are taxable, if any activity whether made or agreed to be made is neither for continuity of business nor for advancing or furtherance of the business, such transaction, will not be a supply at all. Hence, the activity of the Applicant Institution cannot be considered as business and as a result it cannot be obliged to comply with the provisions of GST Act, Rules and Notifications
- 4.9 Although the applicant is not carrying any business activity still it is covered by the scope of "Educational Institution" in terms of Notification 12/2017 C.T.– dt. 28/6/2017 at Sr. No 66. Further, the nominal charges received from the patients are likely to be covered under the category of Health care service by a clinical establishment under Sr. No 74 in terms of Notification 12/2017 Central Tax – dt. 28/6/2017.
- 4.10 In the light of judicial pronouncement referred in detail submission even the nominal receipts on account of Ancillary or Support activities which are essential in order to achieve the main object, would fall within the category of Educational Services and/or Health Care Services. Even if by any stretch of imagination such receipt would be covered entry Sr. No. 1 to Notification 12/2017 C.T. – dt. 28/6/2017 since the Applicant is registered under section 12 AA of the Income Tax Act and carrying out the activities covered by such Entry.
- 4.11 Hence, applicant's receipt falls under the Exempt Category of Services, even though covered by the different entries and as a result the Applicant is covered by the exception provided by section 23 and further clarification by the GST council. In conclusion the Applicant is neither liable for registration u/s 22(1) nor under the compulsory registration provision u/s 24.
- 4.12 Question No. (iii) (a) is whether the fees and other charges collected from students/ patients would constitute as "outward supply" under section 2 (83) of the GST Act, 2017 & if yes then whether it will fall in classification entry at Sr. No 66 or the portion of nominal amount received from patients at Sr. No 74 of Notification 12/2017 CT(R) – dt. 28/6/2017. This question is mainly to clarify the Serial Number of Entry under which the receipt would fall in the light of the fact that the Hospital is a Clinical Laboratory mandatorily needed for Medical Education.
- 4.13 Question No. (iii) (b) pertains to whether cost of Medicines and Consumables recovered from OPD patients along with nominal charges collected, for Diagnosing by the pathological investigations, CT-Scan, Colour Doppler, Angiography, Sonography, etc. during diagnosis and treatment of disease would fall within the meaning of "composite supply" qualifying for exemption under the category of "health care services." Clause 2. (zg) of Notification 12/2017 Central Tax – dt. 28/6/2017 provides the scope of "health care services" by hospital which covers wide range of services in respect of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India. The applicant collects nominal charges from patients treated through the OPD section of hospital which includes various pathological and/or high-level



investigation and also for medicines and consumables provided, in order to cure from varied illness and as such the said charges bundled together would composite supply like for IPD patients and accordingly would fall within the exempt category "health care services."

- 4.14 With regards to Question No. (iii) (c) applicant states that, in order to comply with mandatory requirements of medical education, the Society had to attract the patients by providing patient's friendly atmosphere equipped with the teaching lab with the advance equipment, implements, apparatus and qualified experts as well as trained medical personnel, and at the same time had to provide medical treatment, at an affordable cost to the rural population. For this purpose, Applicant Society have floated several schemes which inter alia includes Unparallel Health Insurance Scheme prescribing a premium of Re.1/- per year per resident of the concerned village and for urban population Rs.500/- for entire year for a family comprising of five members which ensures the substantial concession to them during the course of treatment of illness through IPD and OPD. Such charges are in the nature of consideration for the services agreed to be made for treatment of illness and hence falls within the category of "health care services" qualifying for exemption under entry 9993.
- 4.15 With respect to Question (iii) (d) applicant states that its main activity is education and for that purpose students, parents, patients, relative of patients, staff members, expert faculties, and many others remain within the premises who need various facilities like Banking, Parking, stay arrangement, Food items, Photocopy etc. The establishment of the Applicant since located at small Village called Sevagram and therefore it is duty bound to ensure that the much-needed services are available in close proximity and therefore the required space is made available by the applicant society. Further, there is also a realisation from disposal of waste and unusable items, equipment etc. which is even not 0.001% of the total receipt of the institution and expenditure incurred. Though the institution does not intend to collect such charges for usage thereof but in order to avoid misuse some nominal amount is collected during the course of medical education and therefore such charges shall fall within the category of educational services qualifying for exemption as provided act Sr.No. 64 of Notification no. 12/2017 issued on 27.06.2017.
- 4.16 Though various judicial pronouncement have held that charitable institutions fall within the meaning of definition of a dealer but, the applicant's fact are different since no activity of commercial nature is being carried on & as such, the applicant's facts cannot be correlated/equated with those cases where the decision is given against the society and therefore the facts of the society are distinguishable with those one. The applicant's main domain is to provide "medical education" and as such cannot be tagged as business activity and thus obliging to comply with the provisions of GST Law.
- 4.17 Applicant was specifically excluded from the Scope of Dealer under earlier Laws
- 4.18 It is beyond doubt that applicant Society is not obliged to get registered since the services provided by it i.e., educational services which includes services rendered to poor patient, are not covered by the definition of "Supply" as per charging section 7 of the CGST Act, 2017 which defines the scope of supply which is liable for GST.
- 4.19 Even in alternative, if the services of Applicant are treated as Supply still all the receipts fall within the scope of "Exempt Supply" and thus in terms of Section 23 applicant is permitted to remain without having registration. Further there being no occasion to register compulsorily under section 24 the Institute is not required to be registered under the GST Law and thus not obliged to comply with the provisions.



- 4.20 *In contention that the KHS and MGIMS are not separate and legal entity the applicant has submitted XVIII documents duly supported by judicial pronouncements and therefore this honourable bench is humbly requested to consider KHS and MGIMS as single entity and decide the issue in question accordingly. The definition of person Us 2(84) does not cover the activity but it covers the Entity and even the courts have held that it is the entity and not the activity to be covered.*
- 4.21 *However, till date Applicant is in regular compliance as a Registered Person.*
- 4.22 *If meagre receipts on account of Disposal of Waste, Parking Slot etc. are considered to be the Taxable Receipt and by virtue of such receipt the registration under GST Act is mandated then every School, College, Temple and almost all the Charitable Institutions would be obliged to comply with the GST law which is not the intention of the legislature.”*

05. DISCUSSIONS ANS FINDINGS:

- 5.1 We have gone through the facts of the case, documents on record, orders passed earlier in this case by this office as well as order passed by the Appellate Advance Ruling Authority and the submissions made by both, the applicant as well as the jurisdictional officer.
- 5.2 The Applicant has submitted that they are registered as a Charitable Society at Sevagram, under the Registration of Societies Act, 1860 and also registered under The Bombay Public Trust Act, 1950, with the sole objective of attending to the health needs of rural India. They are also registered under Section 12AA of the Income Tax Act, 1961 besides having recognition under The Foreign Contribution Regulation Act 1976. They have also submitted that “MAHATMA GANDHI INSTITUTE OF MEDICAL SCIENCES” (MGIMS) was established in 1969 as a JOINT PROJECT with an agreed arrangement for funding the said project by Government of India, Government of Maharashtra and Applicant Society in the ratio of 50:25:25 respectively. They have further submitted that the Governing Council of MGIMS, as per University Statute comprises of Ten Members and a Chairman out of which, five Members are nominated by Kasturba Health Society and the remaining five Members are nominated by Central and State Governments.
- 5.3 The first contention of the Applicant is that they are not into any business. The word “business” as defined under Section 2(17) of the GST Act in inclusive manner reads as under:
 “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 (a) above;
 (c) any activity or transaction in the nature of(a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;
 (d) supply or acquisition of goods including capital assets and services in connection with commencement or closure of business;
 (e);
 (f) admission, for a consideration, of persons to any premises; and
 (g);
 (h);
 (i)
- 5.4 The main thrust of the applicant’s argument is on the fact that they are charitable institution, working without pecuniary benefits. However, the definition of “business” is an inclusive one and it covers almost all activities in its ambit, even those which are made without any



pecuniary benefit. Medical education is a profession, so the same is covered by the said word profession as appearing in the definition; and the words used in definition viz other similar activities would also cover the other ancillary activities of the applicant in the scope of the said definition. The definition under earlier laws were not that much exhaustive. The applicant has not relied on any case law decided under the GST Act. Hence, activities of the applicant are covered by the scope of the term "business". The applicant is a society registered and therefore gets covered under sub-section (84) of Section 2 of the GST Act which defines the term "person". Applicant has not relied on any particular provision or schedule entry or any particular notification to prove that they are not covered under the scope of words 'business'/'person'.

5.5 The applicant has made certain submissions before the Appellate Authority for Advance Ruling, which are as under: (as narrated in Appeal Order)

"18.5 It is matter of record that all the technical-non technical staff working for the implementation of the project titled as "MGIMS" are the employees of Kasturba Health Society (KHS) only, where they will sue or be sued through the Kasturba health Society, a legal entity. MGIMS is not an independent organization much less a legal entity in different or separate from Kasturba Health Society and thus it is an authority for appointment, superintendence and termination as well as for disciplinary action against the employees working with MGIMS. Further the financial transaction of MGIMS is regulated by KHS only. The finances necessary for day to day activities are provided by the KHS and all the required infrastructure and facility such as land, building, roads, power supply, water supply, are owned and provided by KHS right from inception of the MGIMS. In other word words MGIMS does not have an independent existence other than that of KHS and for that reason, by no stretch of imagination or by any scale it can be held that the Kasturba Health Society and MGIMS are separate and distinct person as held by advance ruling authority of Maharashtra State in its order dated 04-05-2019.

18.6 This contention of the appellant shall find support from the ratio laid down by the Apex Court in the case of M/s. Queen's Educational Society v/s Commissioner of Income Tax decided on 16.03.2015 in Civil Appeal No.5167 OF 2008, to the effect that an educational society, is running an educational institution solely for educational purposes. It was further held that if, in substance and reality, the sole purpose for which the assessee has come into existence is to impart education at the level of colleges and schools, such an educational society should be regarded as an "educational institution". (Aditanar Educational Institution v. Additional Commissioner of income Tax, II 9971 224 ITR 310 (SC)). Educational Institutions, which are registered as a society, would continue to retain their character as such. The distinction sought to be made between the society and the educational institution run by it, does not, therefore, merit acceptance. Incidentally Karnataka High Court in CIT Central v/s Children Education Society 358 ITR 373 has adopted the identical line of reasoning.

18.7 The above contention of the appellant gets further reinforced with evidences and information already gone on the authentic records of Central & State Govt. such as :

Central Govt.

- For release of Grant, which is in the name of KHS for running of MGIMS. (Ann-I)
- Provident Fund and Pension Fund registration are the name of KHS for the employees working at MGIMS. (Annexure-II)
- Grant of PAN is in the name of KHS through which all the financial transaction relating to MGIMS are reported to Central Govt. (Annexure-III)



- Registration is in the name of KHS for carrying out the Research activities in the fields of Medical Education and Health Care by the staff working at MGIMS granted by the Dept. of Science and Technology of Govt. of India (Annexure-IV)
- The Central Board of Direct Taxes of Government of India has issued the notification for recognizing the Research programme in the name of KHS only. (Annexure-V)
- For the purpose of regulating the transaction relating to MGIMS in foreign currency the registration has been granted under FCRA in the name of KHS alone and the transaction of MGIMS are not required to report separately. (Annexure-VI)

State Government

- For release of Grant is in the name of KHS for running of MGIMS by State Govt. (Annexure-VII)
- Professional Tax registration in the name of KHS for the employees working at MGIMS so also registration for workers on contract basis (Annexure-VIII)
- Holding of immovable property for the purpose of running of MGIMS are only the name of KHS as revenue/mutation records are concerned. (Annexure-IX)
- The State Government has empowered KHS to implement its various public Health related schemes like Mahatma Phule Health Care Scheme as well as Blindness eradication programme through the employees working at MGIMS. (Annexure-X).
- The RTO authorities have registered Ambulance, vehicles, plied for the purpose of MGIMS, in the name of KHS only. (Annexure-XI).

Other Evidences

- The MGIMS is functioning within the framework set forth by the constitution of KHS is titled as "Memorandum of Association" and "Rules and Regulations "and as such there is no separate documents endorsed by Law former for regulating the function of MGIMS or anybody claiming through it. (Annexure-XII)

➤ For the reason that KHS is sole legal entity as responsible and answerable for every operational impact of MGIMS, the registration under the provisions of Goods and Services Tax Act 2017 is obtained in the name of KHS and as such all those transaction concerning and touching to MGIMS are being regularly reported in the name of KHS as much as the liability under the GST is concerned (Annexure-XIII)

In the context of above described factual matrix and applicable principle of laws there remains hardly any room to allege that KHS and MGIMS are separate and distinct person and working independently."

5.6 It is an admitted fact that the College imparts education of the courses recognized by the Nagpur University. In view of the Schedule entry and the Clarifications (cited in the submissions by jurisdictional officer), it is clear that the applicant is engaged in 'business'. The receipts on account of fees are for recognized courses. The fees are accounted for in the books of the M/s Kasturba Hospital Trust. MGIMS even does not have a bank account in its name. Thus we agree with the submissions made by the jurisdictional officer that, Applicant is providing the services of medical education (in view of the schedule entry which reads as under):

Notification No. 12/2017-Central Tax (Rate) dated: 28.06.2017.

Sr. No	Chapter, Section, Heading, Group or Service Code	Description of Services	Rate (per cent.)	Condition



	(Tariff)			
1	2	3	4	5
66	Heading 9992	Services provided - (a) by an educational institution to its students, faculty and staff; (b) to an educational institution, by way of,- (i) transportation of students, faculty and staff; (ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Unión territory; (iii) security or cleaning or housekeeping services, performed in such educational Institution; (iv) services relating to admission to, or conduct of examination by, such institution; upto higher secondary: Provided that nothing. contained in entry (b) shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent.	Nil	Nil
74	Heading 9993	Services by Way of (a) health care services by a clinical establishment, an authorized medical practitioner or para-medics; (b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.	NIL	NIL

5.7 The applicant is factually engaged in imparting medical education. The said courses are recognized by Nagpur University. The applicant is also providing Health Care Services as is seen from their submissions. The receipts received on account of imparting medical education service as well as the health care services supplied by the applicant are exempt from GST under the provisions of Sr. No. 66 and 74 of Notification No. 12/2017-Central Tax (Rate) dated: 28.06.2017.

5.8 In view of the above observations we refer to the questions raised in the subject application and discuss the same as under:-

5.9.1 Question No. (i) : *Whether the applicant, a Charitable Society having the main object and factually engaged in imparting Medical Education, satisfying all the criteria of "Educational Institution", can be said to be engaged in the business so as to cast an obligation upon it to comply with the provisions of Central Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017 in totality.*

5.9.2 We have already held in para 5.4 above that, the activities of the applicant which includes medical education services are covered under the scope of the term "business". In fact, Education Services are classified under Service and Accounting Code (SAC) 9992 and considered to be a supply of services. Since the applicant's supply of medical education services are also considered to be business there is definitely an obligation cast upon it to comply with the provisions of CGST Act, 2017 and the MGST Act, 2017. However with only respect to the medical education services, as is asked in the said Question No. (i), the applicant may not comply with the provisions of CGST Act, 2017 and the MGST Act, 2017, since the applicant being an educational institution, is providing medical education services as a part of a curriculum for obtaining a qualification recognized by any law (in this case the qualification is recognized by the Nagpur University) for the time being in force the said

supply would be exempt under the GST Laws (Sr. No. 66 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 refers).

- 5.10.1 Question No. (ii) :- Whether the applicant, a Charitable Society having the main object and factually engaged in imparting Medical Education, satisfying all the criteria of "Educational Institution" is liable for registration under the provisions of section 22 of the Central Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017 or it can remain outside the preview of registration in view of the provisions of section 23 of the said act as there is no Taxable supply
- 5.10.2 GST is a tax on the event of 'supply'. Every supplier of goods or services effecting taxable supply needs to get registered when the turnover of supply crosses the threshold limit as prescribed under the GST Act. As per the scheme of the Act, those suppliers, whose aggregate turnover of all supplies exceeds the threshold limit as prescribed under Section 22 (including exempted and taxable supplies) are liable for registration. Thus to be liable for registration, a person has to satisfy two conditions namely, the supply of taxable goods or services or both and the aggregate turnover in a financial year exceeds threshold limit (which includes taxable and exempt supply or any other receipts).
- 5.10.3 The expression 'taxable supply' has been defined under the Act, as below:
Section 2(108): "taxable supply" means a supply of goods or services or both which is leviable to tax under this Act;
Thus a person who is engaged exclusively in the business of supplying goods or services or both that are not at all liable to tax or wholly exempt from tax is not liable for registration under Section 22 of the GST Act. Thus even without referring to section 23 of the Act, we can say that a person, whose aggregate turnover of all supplies is other than taxable supply, is not liable for registration.
- 5.10.4 Section 23, provides exemption to certain category/ class of person from obtaining registration under the Act. Such category consist of persons who are engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax or an agriculturist, to the extent of supply of produce out of cultivation of land.
- 5.10.5 Section 24 deals with compulsory registration with respect to categories of persons specified therein. As per Section 24, various categories of persons including those who are required to pay tax under reverse charge shall, notwithstanding anything contained in subsection 1 of Section 22, be required to get registered under the Act.
- 5.10.6 If the impugned supply of service by way of medical education made by the applicant are the only supplies undertaken by the applicant, in such a case, the applicant is not required to obtain registration under GST law, since the impugned supply is held to be exempt cited supra. However, if the applicant is undertaking or proposes to undertake any taxable supply of goods or services or both (other than described above) (such as renting of property, restaurant service or provision of any other taxable service), then in such a scenario the applicant will be required to obtain GST registration under Section 22 of the GST Act. Since, the applicant is also effecting certain taxable supplies (it is an admitted fact) as discussed in Question No. (iii) and since turnover exceeds the threshold limit, the applicant is liable for registration.
- 5.11 The applicant submitted that if the answers to questions no (i) and (ii) are answered against the contention of the applicant institution then following further questions (iii) (a to d) are



being raised. Since answer to question no. (i) of the application is against the contention of the applicant, it is necessary to deal with other questions asked.

- 5.12.1 Question No. (iii) (a) :- *Whether the fees and other charges received from students and recoupment charges received from patients would constitute as "outward supply" as defined in section 2 (83) of the CGST Act, 2017 and MGST Act, 2017 and if yes then whether it will fall in classification entry at Sr. No 66 or the portion of nominal amount received from patients at Sr. No. 74 in terms of Notification 12/2017 C.T.-dt. 28/6/2017.*
- 5.12.2 With regard to question no. (iii) (a) it is noticed that, the first part of the question is whether the fees and other charges received from students and recoupment charges received from patients would constitute as "outward supply" as defined in section 2 (83) of the CGST Act, 2017 and MGST Act, 2017
- 5.12.3 As per section 2 (83) of the CGST Act, 2017, —*"outward supply" in relation to a taxable person, means supply of goods or services or both, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal or any other mode, made or agreed to be made by such person in the course or furtherance of business.*
- 5.12.4 We find that, the fees and other charges received from students and recoupment charges received from patients would not constitute as "outward supply" as defined in section 2 (83) of the CGST Act, 2017 and MGST Act, 2017, rather, the fees /other charges would, at the most constitute as 'consideration' received against supply, taxable or non-taxable. Hence we do not discuss the classification entry of such fees and other charges received.
- 5.12.5 However it appears that, the applicant is actually asking whether such fees and other charges received from students and recoupment charges received from patients can be treated as consideration towards "outward supply" as defined in section 2 (83) of the CGST Act, 2017 and MGST Act, 2017. We hold that, the fees and other charges received from students are exempt from tax as the courses which are being conducted by the applicant are recognized courses, viz. recognized by Nagpur University. Regarding recoupment charges received from patients admitted in the hospital run by the applicant, reference may be made to the schedule entry of health services (*Notification No. 12/2017-Central Tax (Rate) dated: 28.06.2017*) which is as under:-

Sr. No	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
1	2	3	4	5
74	Heading 9993	<i>Services by Way of (a) health care services by a clinical establishment, an authorized medical practitioner or para-medics; (b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.</i>	Nil	Nil

The said charges received are also exempt from tax, as the same are covered by the scope of exemption entry no. 74 of health service mentioned above. The reference to relevant Sr. No. 5 of Circular No. 32/6/18-GST dated 12.02.2018 (cited supra) also can be made.

Circular No. 32/6/18-GST dated 12.02.2018 at sr. No. 5

S.No.	Issue	Clarification
5	<i>Is GST leviable in following cases:</i>	<i>Health care services provided by a</i>

<p>(1) Hospitals hire senior doctors/ consultants technicians independently without any contract of such persons with the patient; and pay them consultancy charges, without there being any employer employee relationship. Will such refers].</p> <p>(1) Services provided by consultancy charges be exempt from GST? Will revenue take a stand that they are providing services to hospitals and not to patients and hence must pay GST?</p> <p>(2) Retention money: Hospitals charge the patients, say; Rs.10000/- and pay to the consultants/ technicians only Rs. 7500/- and keep the balance for providing ancillary services which include nursing care, infrastructure facilities; paramedic care, emergency services, checking of temperature, weight, blood pressure etc. Will GST be applicable on such money retained by the hospitals?</p> <p>(3) Food supplied to the patients: Health care services provided by the clinical establishments will include food supplied to the patients; but such food may be prepared by the canteens run by the hospitals or may be outsourced by the Hospitals from outdoor caterers. When outsourced, there should be no ambiguity that the suppliers shall charge tax as applicable and hospital will get no. ITC. If hospitals have their own canteens and prepare their own food; then no ITC will be available on inputs including capital goods and in turn if they supply food to the doctors and their staff; such supplies, even when not charged, may be subjected to GST.</p>	<p>clinical establishment, an authorized medical practitioner or para-medics are exempt. (Sl. No. 74 of notification No. 12/2017- CT(Rate) dated 28.06.2017 as amended, senior doctors/ consultants/ technicians, hired by the hospitals, whether employees or not, are healthcare services which are exempt.</p> <p>(2) Healthcare services have been defined to mean any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy. In any recognised system of medicines in India[para 2(zg) of notification No. 12/2017- CT(Rate)]. Therefore, hospitals also provide healthcare services. The entire amount charged by them from the patients including the retention money and the fee/payments made to the doctors etc., is towards the healthcare services provided by the hospitals to the patients and is exempt.</p> <p>(3) Food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare and not separately taxable. Other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable.</p>
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Hence, said charges collected are exempt from tax, unless they are covered elsewhere in other taxable entries like charges towards hair transplant and/or plastic surgery etc. which is not the case in the present matter.

5.13 With regard to question no. (iii)(b), the jurisdictional officer has cited the relevant schedule entries and the circular. We agree with the said submissions and hold that charges recovered from OPD patients are exempt from tax.

5.14.1 With regard to question no. (iii)(c) it is noticed that the applicant has asked Whether the nominal charges received from patients (who is an essential clinical materials for education laboratory) towards an "Unparallel Health Insurance Scheme" to retain their flow at one end for the purpose of imparting medical education as a result to provide them the benefit of concessional rates for investigations and treatment at other end would fall within the meaning of "supply" eligible for exemption under the category of "educational and/or health care services."

5.14.2 It is admitted fact that the applicant provides a sort of medical insurance service and collects very small amounts towards premium. What is the object of provision of said service, would not alter the nature of provision of any service. Each service or group of services, provided has to be looked into separately with regard to schedule entries, as per the scheme of the act. The applicant is not holding license from Insurance Regulator to provide the insurance service. So said service would not get covered by the scope of insurance service. It will get covered by the residuary entry, which reads as under:

Notification No 11/2017

Sl. No	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (%)	Condition
35	Heading 9997	Other services (washing, cleaning and dyeing services; beauty and physical well-being services; and other miscellaneous services including services nowhere else classified).	9	-

Thus said insurance service is covered by the residuary entry being taxable at 18%.

5.15.1 With regard to question no. (iii) (d) it is noticed that applicant desires to know the rate of tax of services viz Whether the nominal amount received for making space available for essential facilities needed by the students and staffs such as Banking, Parking, and Refreshment which are support activities for attainment of main activities and further amount received on account of disposal of wastage would fall within the meaning of "supply" qualifying for exemption under the category of "educational and/or health care services."

5.15.2 It is admitted fact that the applicant provides renting and other services as discussed in this question and collects certain amounts towards provision of said services. What is the object of provision of said service, would not alter the basic nature of provision of any service. Each service or group of services, provided has to be looked into separately with regard to schedule entries, as per the scheme of the act. Here, the applicant has provided space on rent to Bank and to a third party canteen contractor and the applicant has provided space on rent for the purpose of parking. Proper details of said activities have not been produced and no sample invoices or agreements are produced. However, from oral arguments it has come to notice that it is nothing but renting service. The tax rate applicant thereon would be 18%. The relevant schedule entry reads as under:

Sl. No	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (%)	Condition
16	Heading 9972	Real estate services..	9	-

99721 - Real estate services involving owned or leased property

The classification of services relevant to present activities read as under:

- 997212 - Rental or leasing services involving own or leased non-residential property
- 997213 - Trade services of buildings
- 997214 - Trade services of time-share properties
- 997215 - Trade services of vacant and subdivided land

5.15.3 In the present case, what is given on rent is commercial property and not the residential property. Hence, tax rate on receipts towards such service shall be 18%.

However, if the refreshments which being provided by applicant, are provided on its own account then rate of tax thereon is explained in following provisions.

5.15.4 Circular No. 28/02/2018-GST ; F. No. 354/03/2018 dated 08th January 2018

Queries have been received seeking clarification regarding the tax ability and rate of GST on services by a college hostel mess. The clarification is as given below:

2. The educational institutions have mess facility for providing food to their students and staff. Such facility is either run by the institution/ students themselves or is outsourced to a third person. Supply of food or drink provided by a mess or canteen is taxable at 5% without Input Tax Credit [Serial No. 7(i) of notification No. 11/2017-CT (Rate) as amended vide notification No. 46/2017-CT (Rate) dated 14.11.2017 refers]. It is immaterial whether the service is provided by the educational institution itself or the institution outsources the activity to an outside contractor.

Corrigendum to Circular No. 28/02/2018-GST; F.No. 354/03/2018

In Para 2 of the said circular, for

“It is immaterial whether the service is provided by the educational institution itself or the institution outsources the activity to an outside contractor.”

“2.1 If the catering services is one of the services provided by an educational institution to its students, faculty and staff and the said educational institution is covered by the definition given under para 2(y) of notification No. 12/2017-Central Tax (Rate), then the same is exempt. [Sl. No. 66(a) of notification No. 12/2017-Central Tax (Rate) refers]

2.2 If the catering services, i.e., supply of food or drink in a mess or canteen, is provided by anyone other than the educational institution, then it is a supply of service at entry 7(i) of notification No. 11/2017-CT (Rate) [as amended vide notification No. 46/2017-CT (Rate) dated 14.11.2017] to the concerned educational institution and attracts GST of 5% provided that credit of input tax charged on goods and services used in supplying the service has not been taken, effective from 15.11.2017.”

The relevant schedule entry reads as under:

Serial No. 66 of Notification No. 12/2017- Central Tax (Rate) dated 28th June, 2017

9992 Services provided – (a) by an educational institution to its students, faculty and staff;

Tax Rate Nil

- 5.15.5 The service of supply of food to non-in-house-patients and those who are not employees of the hospital, will be taxable as restaurant service at 5% (without ITC) provided the conditions of said schedule entry are fulfilled (entry no.7 of notification no 13/2018 dated 26/7/2018). The applicant did not provide any details regarding what sort of canteen, restaurant or mess they are running. The said service provided to staff and employees as well as to in-house-patients is only exempt service as explained in above amended clarification. Thus the said question is answered accordingly.
- 5.15.6 The applicant has also asked whether amounts received on account of disposal of wastage would fall within the meaning of "supply" qualifying for exemption under the category of "educational and/or health care services". It has not been specified by the applicant whether they are referring to bio medical waste of any other waste and accordingly this part of the question is not being answered.
06. In view of the extensive deliberations as held hereinabove, 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)

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

Question (i): Whether the applicant, a Charitable Society having the main object and factually engaged in imparting Medical Education, satisfying all the criteria of "Educational Institution", can be said to be engaged in the business so as to cast an obligation upon it to comply with the provisions of Central Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017 in totality.

Answer :- Answered in the affirmative. However, in view of the submissions made by the applicant and discussions made above, we find that applicant is engaged in imparting Medical Education and it is an exempt service.

Question (ii):-Whether the applicant, a Charitable Society having the main object and factually engaged in imparting medical education, satisfying all the criteria of "Educational Institution" is liable for registration under the provisions of section 22 of the Central Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017 or it can remain outside the purview of registration in view of the provisions of section 23 of the said act as there is no Taxable supply.

Answer :- The applicant is liable for registration as discussed above.

Q.No. (iii) (a) Whether the fees and other charges received from students and recoupment charges received from patients (who is an essential clinical material for education laboratory) would constitute as "outward supply" as defined in section 2 (83) of The Central Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017 and if yes then whether it will fall in classification entry at Sr. No 66 or the portion of nominal amount received from patients (who is an essential clinical material for education laboratory) at Sr. No. 74 in terms of Notification 12/2017 Central Tax-dt. 28/6/2017.

Answer: The said charges collected are exempt from tax as discussed hereinabove.

Q. No. (iii) (b):- Whether the cost of Medicines and Consumables recovered from OPD patients along with nominal charges collected for Diagnosing by the pathological investigations, other investigation such as CT-Scan, MRI, Colour Doppler, Angiography, Gastroscopy, Sonography during the course of diagnosis and treatment of disease would fall within the meaning of "composite supply" qualifying for exemption under the category of "educational and/or health care services."

Answer : The said charges collected are exempt from tax as discussed hereinabove.

Q. No. (iii) (c):- Whether the nominal charges received from patients (who is an essential clinical materials for education laboratory) towards an "Unparallel Health Insurance Scheme" to retain their flow at one end for the purpose of imparting medical education as a result to provide them the benefit of concessional rates for investigations and treatment at other end would fall within the meaning of "supply" eligible for exemption under the category of "educational and/or health care services."

Answer: It is taxable at 18% under the residuary entry, as discussed above.

Q. No. (iii)(d): Whether the nominal amount received for making space available for essential facilities needed by the students and staffs such as Banking, Parking, and Refreshment which are support activities for attainment of main activities and further amount received on account of disposal of wastage would fall within the meaning of "supply" qualifying for exemption under the category of "educational and/or health care services."

Answer: The receipt on account of rent is taxable at 18% as discussed above. It is further clarified that the food supplied to the in-patients as advised by the doctor/nutritionists, as well as supply to employees and staff of the applicant; from such canteen, is a part of composite supply of healthcare and is not taxable. But the other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable at 5%, as discussed above.




RAJIV MAGOO
(MEMBER)


T. R. RAMNANI
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Pr. Chief Commissioner of Central Tax, Churchgate, Mumbai
5. The Joint Commissioner of State Tax, Mahavikas for Website.

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. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.