

OVERVIEW OF FORMATION OF CHARITABLE TRUST AND PROCEDURAL ASPECTS OF CHARITABLE ORGANIZATION

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India witnessing NGO boom, there's 1 for every 600 people

Over 20 Lakh Such Outfits At Work: CBI

Dhananjay Mahapatra | TNN

New Delhi: For a country which till recently had a weak civil society movement, India is now witnessing a boom in the NGO sector. With a population of 1.2 billion, the country could well be the land of opportunities for non-governmental organizations (NGOs) with the CBI conservatively estimating 20 lakh of them operating in states and Union territories.

The mind-boggling figures boil down to one NGO per 600 people. Compare this to the latest government data on police. According to the latest figures from the Union home ministry, India has just one policeman for every 943 people.

PROBLEM OF PLENTY?

1 NGO for 600 people

1 cop for 943 people

State	No. of NGOs
UP	5,48,194
Kerala	3,69,137
MP	1,40,000
Maharashtra	1,07,797
Gujarat	75,729

But there is an accountability deficit among NGOs. Many don't submit details of receipt of grant and spending to income-tax authorities, the CBI informed the Supreme Court.

On the SC's order, the CBI sought information from the states and UTs about operation of NGOs and status of audit of their funds. Major states — Andhra Pradesh, Bi-

- On SC order, CBI sought info from states on NGOs
- Andhra Pradesh, Bihar, Delhi, Haryana, Karnataka, Rajasthan, West Bengal, Odisha, Tamil Nadu, Chhattisgarh and Himachal Pradesh have not provided any data
- CBI estimate 20 lakh NGOs in the country after other states reported 13L functioning NGOs
- From 2002-09, Rs 6,654cr was released by Centre and states, averaging Rs 950 crore a year

har, Delhi, Haryana, Karnataka, Rajasthan, West Bengal, Odisha, Tamil Nadu, Chhattisgarh and Himachal Pradesh — have provided no data about the number of NGOs operating in their territory.

Without the statistics from these major states, the CBI was informed by other states about the existence of 13 lakh NGOs making the agency con-

servatively estimate that their number could go well be over 20 lakh. In Uttar Pradesh alone 5,48,194 NGOs are operating.

Kerala had 3,69,137 NGOs, Maharashtra 1,07,797, Madhya Pradesh 1,40,000 and Gujarat has 75,729 NGOs.

The CBI had sought, on a Supreme Court directive, information from the states and Union territories about operation of NGOs and status of audit of their funds. While Kerala and Maharashtra have given details of finances of the NGOs operating in their area, Madhya Pradesh gave partial information about their funding. Gujarat was completely silent.

According to information received through RTI queries by the Asian Centre for Human Rights, the Union and state governments between 2002-09 released Rs 6,654 crore to various NGOs, averaging almost Rs 950 crore per year.

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'Three edu institutions earning ₹500cr a year'

CAG Report Questions I-T Dept's Tax Relief

TIMES NEWS NETWORK

New Delhi: The basic premise of a trust is welfare of the society and taking care of the deprived. For this reason alone, trusts are exempted from paying tax and are provided free or cheap real estate. A CAG audit has revealed that contrary to this goal, three educational institutions in Delhi, Mumbai and Pune are earning upto Rs 500 crore a year, and their annual profit ranges between 50% and 84%.

The three institutions, as mentioned in a latest CAG report, have accumulated a profit of Rs 622 crore over the last four years. "Twenty-two educational institutions accumulated surpluses of Rs 819 crore ranging from 35% to 84% of their total income. These surpluses were used for creating fixed assets for earning more profit or transferred to other trusts rather than charitable purpose to avoid tax," CAG said.

The CAG report, tabled in Parliament on Friday, has questioned the I-T department's leniency in allowing these bodies to accumulate such large profits without being taxed and argued that this defeats the concept of a trust.

MAKING MONEY



Trust/Institute	Income	Expenditure	Surplus	%age
Ritnand Balved Found (AY-10), Delhi	500.66	318.60	182	36
Symbiosis Society (AY-9,10,11), Pune	950.50	435.62	514.90	51-61
Tatwajna Vidyapeeth (AY-8,9,10), Mumbai	15.6	2.81	13	77-84
Ishan Education Society (AY-7,8,9,10), Delhi	23.41	8.45	14.95	53-70

Figures in ₹crore | AY: assessment year

Source: CAG

cational Research Society of Delhi and Symbiosis Society Group of Pune — earned profit ranging from 50% to 84% consistently during their assessment period of 2007 to 2011 and accumulated a surplus of Rs 622 crore.

The ministry of finance, however, defended tax relief saying a trust is allowed to accumulate surplus of income up to 15% and that it can be accumulated up to five years.

The auditor did not agree with the argument and said, "Audit has not questioned the legality of the accumulation but pointed out instances of accumulations consistently citing illustration of misuse of such accumulations."

The CAG cited a court or-

Act, should not be adopted on a routine basis and if it is done, then the very purpose of trust will be defeated."

In fact, Section 11(2) of the I-T Act providing for carry over up to 85% is an exception and if it is followed from year to year, then the genuineness of activities of trust itself should be examined by the assessing officer.

The proposed direct tax code bill, which is to bring reforms in the Income Tax, also proposes that trusts and NGOs apply at least 85% of their income in every assessment year to avail of tax exemption.

The auditor has recommended that the finance ministry may "bring in suitable amendment in law to evolve a suitable mechanism so that trusts are not allowed

1. OVERVIEW OF CHARITABLE TRUST

Definition of Charitable Purpose

According to Section 2(15) of the Income Tax Act 1961, Charitable purposes include:-

- relief of the poor,
- yoga,
- education,
- medical relief,
- Environmental awareness
- and the advancement of any other object of general public utility.

According to Section 9(1) of the Maharashtra Public Trusts Act 1950, “charitable purpose includes:

- relief of poverty or distress
- education
- medical relief
- provision for facilities for recreation
- the advancement of any other object of general public utility.



2. ACTS GOVERNING CHARITABLE TRUSTS

- Different legal provisions exist at the national and state level. Some states in India have enacted their own law to govern certain forms of charity.
- In Maharashtra public charitable trust is governed by Maharashtra Public Trust act 1950

3. FORMATION AND REGISTRATION OF THE CHARITABLE ORGANIZATIONS IN MAHARASHTRA

A. Public Charitable Trust under the Maharashtra public trust Act 1950 (Earlier known as BPT Act)

Trust may be either private trust or a public trust. Depending on the nature of trust, they are classified for maintenance of record under B.P.T. Act, 1950 as follows.

- a) Hindu religious trust,
- b) Muslim trust [now under WAQF Act]
- c) Parsi trust,
- d) Christian trust,
- e) Trust registered on the basis of Trust Deed and
- f) Societies converted into trust

B. Section 8 Company under the Companies Act 2013

4. PROCEDURE FOR REGISTRATION OF TRUST UNDER MPT ACT 1950

The following documents are required to be filed for registration of a Charitable Trust:-

- Application under Societies Registration Act 1860.
- Memorandum of Association (as per schedule B) and Rules and regulations (under schedule C)
- Consent letter of Trustees
- Authority Letter
- Affidavit / Self-declaration of trustee
- Information of first governing body meeting
- Application Form in Form –Schedule II under (rule 6 and rule 8) duly notarized.
- Along with NOC of the office , occupation , board resolutions and affidavit of the trustees.
- Application is to be filed online on e-portal at <https://charity.maharashtra.gov.in/en-us/>

5. FRAMING OF MEMORANDUM OF ASSOCIATION

The memorandum contains the following clauses :

1. Name of the Trust
2. Office address of the trust
3. Aims and Objects of trust
4. List of Governing body members
5. Declaration from all trustees duly signed by them and their signature are to be confirmed from a CA or an advocate
6. This is to be signed by all the trustees (minimum 7).
7. Further every page of the Memorandum of Association and Rules and Regulations of the society must be attested by 3 trustee.

6. FRAMING OF RULES AND REGULATION SCHEDULE C

The rules and regulations should contain following clauses :

1. Definition of specific words
2. Jurisdiction
3. Accounting year
4. Membership and Procedure
5. Kind of membership
6. Cessession of membership
7. Notice and quorum of Governing body
8. Election of governing body members
9. Duties and powers of governing body members
10. Governing body and its office bearers
11. Governing body meetings
12. Annual general meeting

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13. Special general body Meeting
14. Provision for sale/ mortgage of immovable property
15. Bank accounts
16. Membership Register
17. Amendments to rules and regulations
18. Change in name and object of society
19. Dissolution of trust
20. Declaration

For the purpose of 12A following clauses are important as follows:-

- Sale of property
- Utilization of the funds
- Irrevocability
- Dissolution

7. PROCEDURAL ASPECTS OF CHARITABLE TRUST

Maintenance of Registers/records:-

- Register of trustees
- Register of members,
- Register of movable and immovable properties in schedule X-AA vide rule 24 A
- Minute books and notices of governing body meetings, extra ordinary general meetings and annual general body meetings

8. FILING OF ANNUAL RETURNS OF THE TRUST

- Filing of Annual return (Schedule VIII balance sheet format schedule IX income and expenditure under rule 17(1)) along with Audit report in schedule IX C under rule 32) refer circular dated 364 dated 31st October 2013 along with corpus certificate and CA Membership certificate.
- Balance Sheet and Income & Expenditure as per MPT Act (Click to open)
- SCHEDULE IX-C (Click to open)

9. FILING OF ANNUAL BUDGET

Filing of Annual budgets in form VII A vide rule 16A of MPT act(to be submitted to charity office one month prior to the financial year) along with notice and resolution of governing body meeting.


Annual Budget Format Charity Budget.xls

10. APPLICATION FOR OBTAINING NOC FOR LOANS BY CHARITABLE TRUST U/S 36(A) OF MPT ACT 1950

1. Prepare project report
2. Obtain consent letter from bank to grant loan
3. Apply to JT. Charity Commissioner for permission to take loan with following documents :-
 - Applications for proposal for obtaining NOC from Jt. Charity Commissioner.
 - Board resolution of governing body, Special general body and general body approving the proposal of loan along with its justification.
 - Project report (justifying the capacity of trust to repay the loan)duly signed by CA
 - Details of property to be mortgaged
 - Consent letter form bank in original
 - Loan statement of the previous loan
 - Copy of the orders of the previous loan taken by the bank.
 - Copy of bye-laws, Schedule-I, Schedule-X.




11. FILING OF CHANGE REPORTS

- Filing of change reports for change of trustees, change of address, change of any clauses of rules and regulations and memorandum
 - Note :- For any change in the object clause of the trust we have to take prior permission from CIT exemptions.
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12. PROCEDURE FOR ADDITION /PURCHASE OF IMMOVABLE PROPERTIES

1. To submit change report along with registered sale deed / gift deed
 2. After acceptance of change report, Charity Office carries out inspection of property and gives paper publication and notice on notice board
 3. If there are no objections received Charity Office passes order granting of addition of property in schedule I
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13. SALE/LEASE OF IMMOVABLE PROPERTY- PROCEDURE U/S 36(1) OF MPT ACT

1. Trustees to call Tenders by paper publication in two news papers
 2. After acceptance of tender by the board application be made to JT. charity commissioner along with relevant papers
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14. PROCEDURE FOR OBTAINING MINORITY STATUS TO CHARITABLE ORGANIZATIONS


- The application for minority status can be made at state level to the concerned ministry and/or to central government
 - In Maharashtra online application is to be made for state level reorganization along with following documents:
 - Registration certificate under MPT act 1950
 - List of trustees with their along with their identity proof religion and language
 - Address proof of Maharashtra for majority trustees
 - Birth certificate
 - Copy of Proof of running educational institution
 - The memorandum of association should contain clause about the minority religion / Linguistic minority
 - The minority certificate is granted to the society concerned by the Ministry of Minority Mumbai
- Before granting application the verification is done by district collector level.

15. REGISTRATIONS OF HOSPITAL UNDER MPT ACT

- The public charitable trusts running charitable hospitals including nursing homes or maternity homes , dispensaries or any other centre for medical relief whose annual expenditure exceeds 5 lakhs are required to register as a charitable hospital with in the meaning of clause 4 of section 41AA.



16. SOURCES OF FUNDS

- Foreign funds
 - CSR funds
 - Government grants from central and state governments
 - Local donations
 - Public Issue (as per finance budget speech 2019)
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17. PROCEDURE FOR OBTAINING REGISTRATION FOR TRUST UNDER FCRA ACT

- It is coming under MHA(Ministry of Home Affairs)
- There are mainly two types of registration granted under FCRA act:
 - Prior permission for obtaining foreign funds from specific donor
 - Regular registration
(by applying online in form FC3)
- The application in prescribed is to be made online to the ministry of foreign affairs. The main requirements are a trust should be in existence for 3 years with minimum turnover of 10 lakhs p.a
- The certificate is granted after verification by state Intelligence Authorities.

- NITI AYOOG registration is must for obtaining FCRA registration.
- If the registration is not granted within 90 days then it is deemed to be registered.

- Filing of FCRA returns

To be filed online in FC-4 within 9 months from the end of financial year

- ❖ We have to file quarterly returns.
- ❖ The returns are to be uploaded on government website also.

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- The registration is granted for five years only and it is to be renewed by filing renewal application.
- There is a cap of 50% on administration expenses
- Changes in trustees to be informed with in 30 days of change.
- There should not be change of more than 50% of the founder trustees.
- The FCRA recognizes only one bank account for obtaining foreign funds. However more bank accounts can be linked for administrative purposes.
- Separate books of accounts to be maintained



18. OFFERS FOR FOREIGN FUNDS

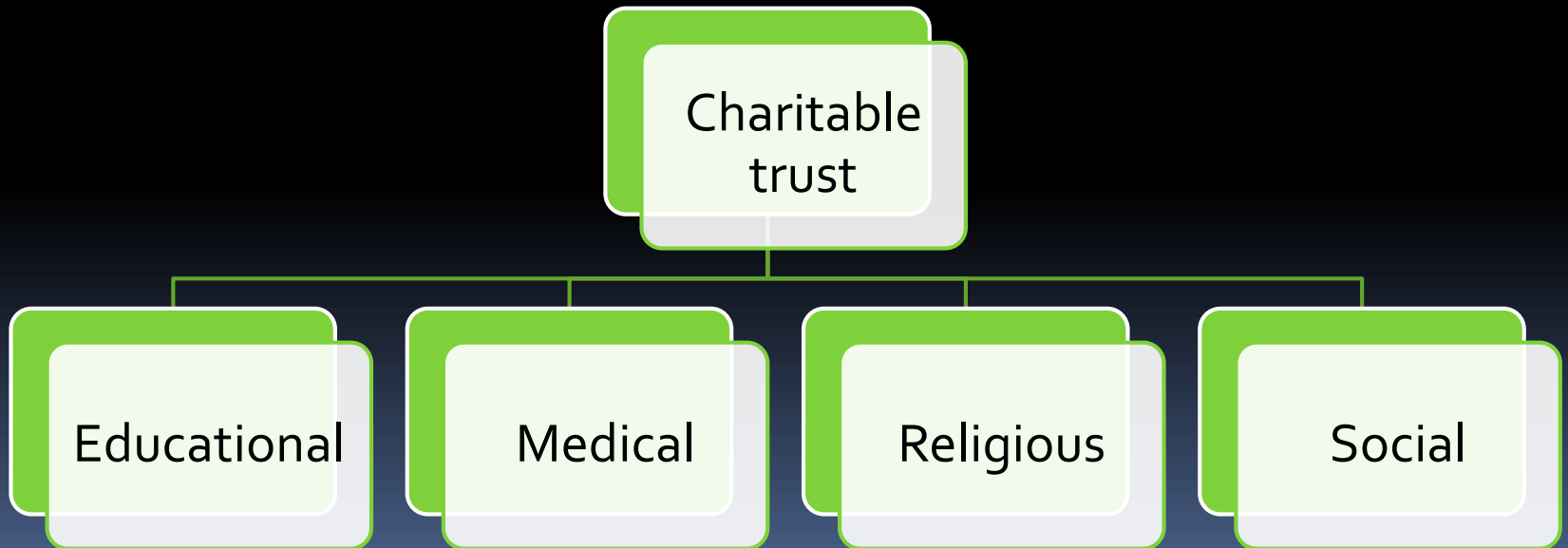
- Markets are flooded with foreign funds in huge quantities, mostly these offers are fake.
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19. CSR FUNDING

- As per section 135 of companies act 2013, every company having
 1. Net worth of Rs 500 crore or more, or
 2. Turnover of Rs. 1000 crore or more, or
 3. Net profit of Rs 500 crore or moreduring immediately preceding financial year,
shall ensure that the company spends in every financial year, at least 2% of the average net profit made during 3 immediately proceeding financial year.


20. APPLICABILITY OF GST

There are certain criteria for a charitable trust or an NGO to be exempted from the Goods and Services Tax. The charitable trust or NGO must be registered under Section 12AA of the Income Tax Act, and the services provided by the charitable trust or the NGO must be for a charitable cause.

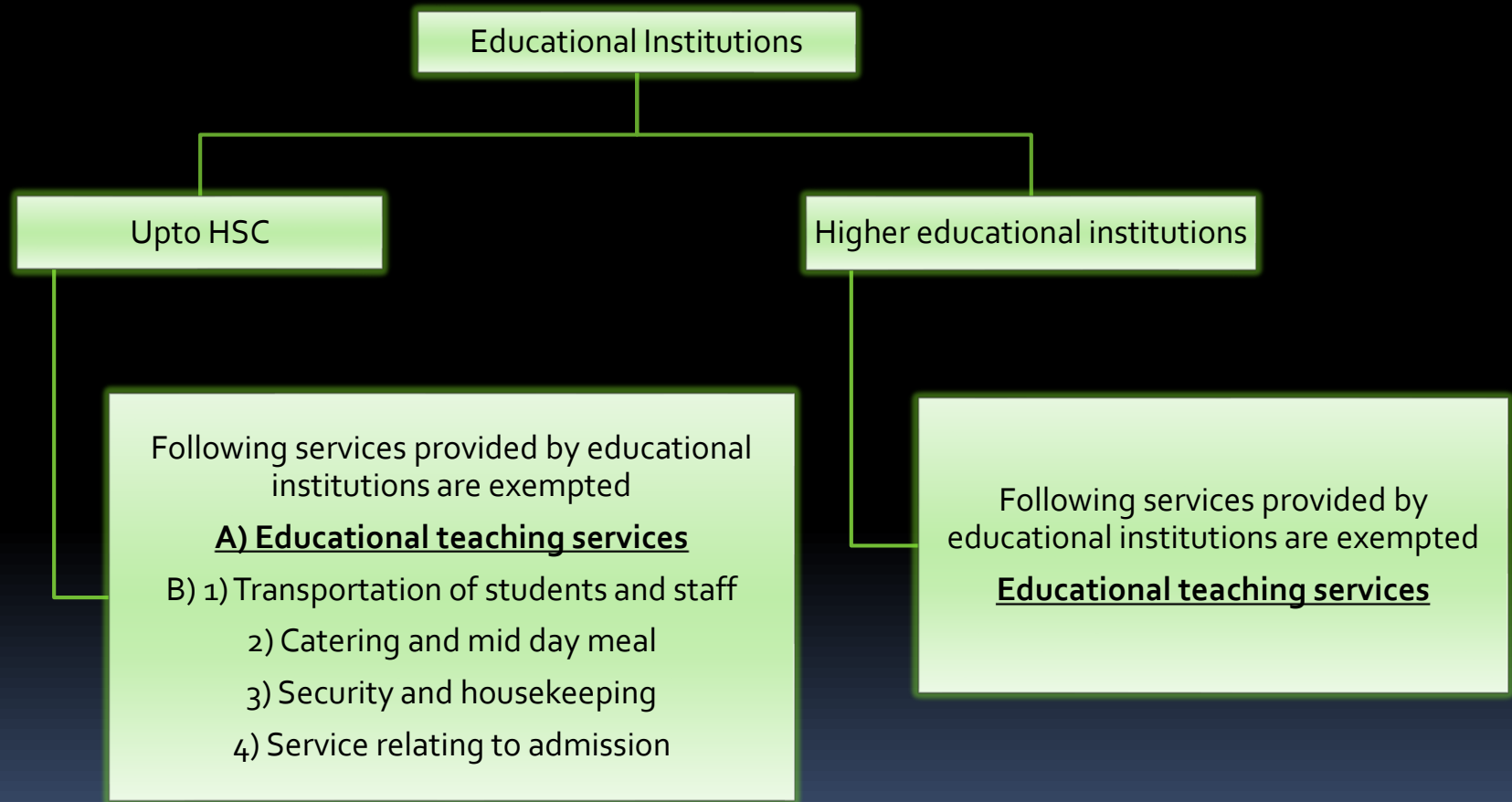




GST ON EDUCATIONAL INSTITUTION

- Defination of Educational Institution under GST-
 - Pre-school education and education up to higher secondary school or equivalent;
 - Education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;
 - Education as a part of an approved vocational education course;
- 

In general ALL educational services are taxable the following educational services are stated as Nil rated by way of notification no.11/2017 and 12/2017- central tax dated 28.06.2017



Note: Service provided by educational institutions and not service provided to education institutions are exempt.

GST ON MEDICAL INSTITUTION

- Exemptions notification on Health Care services under GST:
- **Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017** has exempted health care services vide Sr. No. 74 which is reproduced as under:

Services by way of:


- *(a) "Healthcare Services by a Clinical Establishment or 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*
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- **Other Exemptions related to healthcare:**
 - Sr. No. 46: Services by a veterinary clinic in relation to health care of animals or birds.
 - Sr. No. 73: Services provided by the cord blood banks by way of preservation of stem cells or any other service in relation to such preservation.
 - Sr. No. 74: Transportation of Patients in Ambulance

GST ON RELIGIOUS TRUST

- Any activity in the commercial nature done by religious trust are taxable under GST.
- Various kinds of services by religious trust are taxable if:
 - Renting of room if the declared tariff exceeds Rs. 1,000 per day
 - Renting of premises, community halls, Kalyanmandapam where rent is exceeding Rs. 10,000 per day
 - Renting of shops or other space for business where rent is Rs. 10,000 or more per month.
 - Sale of religious goods in satsang like CD, Statues, idols, books, etc. (Authority of advance ruling)
 - Renting of religious place meant for general public is not subject to GST
 - Donation given with specific instruction or mutual understanding then such donations will be subject to GST



GST ON SOCIAL TRUST



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



Thank You