THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX

(Constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)

ORDER NO. MAH/AAAR/DS-RM/13/2022-23 **Date- 05.12.2022**

BEFORE THE BENCH OF

(1) Dr. D.K. Srinivas, MEMBER (Central Tax)

(2) Shri Rajeev Kumar Mital, MEMBER (State Tax)

Name and Address of the Appellant:	M/s. Kasturba Health Society, Sevagram Road, Sevagram. Vardha- 442102.
GSTIN Number:	27AAATK2046G1ZV
Clause(s) of Section 97, under which the question(s) raised:	(f) whether applicant is required to be registered; (g) whether any particular thing done by the applicant with respect to any goodsor services or both amounts to or results in a supply of goods or services or both, with in meaning of that term.
Date of Personal Hearing:	25.11.2022
Present for the Appellant:	Shri Rajendra Bhutada
Details of appeal:	Appeal No. MAH/GST-AAAR/11/2021-22 dated 12.02.2022 against Advance Ruling No. GST-ARA-120/2018-19/B-90 dated 10.11.2021.
Jurisdictional Officer:	Assistant Commissioner, CGST &C.Ex, Division-Hingna,Nagpur-1.

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

1. At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the MGST Act.

2. The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [**hereinafter referred to as "CGST Act" and "MGST Act"**] by M/s. Kasturba Health Society, Sevagram Road, Sevagram, Vardha- 442102, (**"hereinafter referred to as "the Appellant" or "*Appellant Society*"**) against the Advance Ruling No. GST-ARA-120/2018-19/B-90 dated 10.11.2021., pronounced by the Maharashtra Authority for Advance Ruling (hereinafter referred to as **"MAAR"**).

BRIEF FACTS OF THE CASE

3. The Constitution of India, though promised, the implementation of the effective health delivery system to the rural masses/unprivileged, but nothing significant could be achieved in this direction even after 20 years of an Independence. In order to overcome this utter failure, the Government of India, after setting up several Committees, had decided to involve the NGO's in establishing such "**Medical Institute**" as a "Joint Venture" with the participation of State Government, which can produce the qualified and trained Doctors, who are willing to go and settle down in rural areas, and thus, the promise given in this direction can be fulfilled, and in order to materialise this, the proposals were invited from the NGOs.

4. In response to Government of India's Initiative to fulfil its constitutional obligations which is followed by the offer, the **Kasturba Health Society** emerged as Charitable Institution by way of Registration Under the Societies Registration Act, 1860 vide registration No.95/64(Wardha) and also under The Bombay Public Trust Act, 1950 vide registration No.F-87 (W) on 11th Day of September 1964, with the sole objective of attending the **health needs of rural India**.

5. On account of its Charitable Objects for solely focusing on Health and Medical Education, the Appellant society was also registered under Section 12AA of the Income Tax Act, 1961 besides having recognition under the Foreign Contribution Regulation Act 1976. The society since carried out various Health related research activities, it was recognised as a **"Research Institute"** by the Department of Science and Technology, Government of India, and further under Section 35(1)(ii) of the Income Tax Act 1961.

6. The Appellant is **existing solely for imparting the Medical Education**, *till Post Graduation*, as a Joint Venture having funding from Central Government @ 50%, State Government @ 25% and remaining 25% comes mainly by way of Fess from Students and Patients. The Appellant is having its setup in form of "**Medical College**" named as "**Mahatma Gandhi Institute of Medical Science**", at Village Sewagram, Dist. Wardha, which is attached with clinical laboratory named as **"Kasturba Hospital"**.

7. Since the Mahatma Gandhi was great inspiration, due to his long stay at the place which is area of operation of the Appellant, coupled with all-time desire to work for the last person of the Society, and thus in order to carry on the Charitable Activities in the same spirit by keeping Father of Nation, all the times as motivational factor, for the Students, Doctors, Nurses and other Staff etc. the Appellant Society named its Educational Unit as **"MAHATMA GANDHI INSTITUTE OF MEDICAL SCIENCES"** followed by naming its Clinical Laboratory as **"KASTURBA HOSPITAL"**. Though both these activities in question are carried on under the different titles but the Legal entity is Appellant Institution. i.e., **Kasturba Health Society** to whom all the recognition, Licences and approvals are granted.

8. The Appellant society since solely engaged in education, and thus, was not obliged to get registered under The Bombay Sales Act, 1959, Service Tax Act, and also under the Maharashtra Value Added Tax Act, 2002. However, on introduction of GST w.e.f. 01.07.2017 the Transporters, Suppliers, Vendors and Service Providers from all the corners were pressurising to provide them the GST Registration Number of the Appellant Institution. In this scenario, the Appellant without having the GST registration No. was facing the practical difficulties, and therefore, in order to overcome these issues, it had applied for Voluntary Registration, and as a result, got registered with GSTN having registration No. **27AAATK2046G1ZV** with effect from **21st July 2017**.

9. Though the Appellant society got registered voluntarily under GST Act for the reasons mentioned above, it had not filed any returns till March 2019, since none of the activity was in the nature of **"business"** so as to fall within the meaning of **"supply"** as provided in section 2(87) of the GST Act and hence it bonafidely believed that it is not obliged to comply with the provisions of GST Act. The jurisdictional GST authorities have issued notices to the Appellant society for adhering to the compliance along with an obligation of filing of returns and therefore the Appellant institution enquired with other Institutions, those who are having engaged in similar activity. Where it is learnt that none of them is registered under GST act and further learnt that those who have attempted to register, had also applied for the cancellation of registration, which is **duly cancelled by the jurisdictional GST authorities after considering their nature of activity and having convinced that they are not liable for registration**.

10. The Applicant society filed application for advance ruling on 04.02.2019 in respect of following questions: -

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.

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 Services Tax Act, 2017 and Maharashtra Goods and Services 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.

iii. In a situation if above questions are answered against the contention of the appellant institution then **following** further questions were 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(R) – 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 material 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, Refreshment etc. 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."

11. The MAAR vide order No. GST-ARA-120/2018-19/B-51 dated 04.05.2019, held that the Kasturba Health Society and MGIMS are separate and distinct person and as such are two separate entities and therefore question were not answered. The Applicant preferred an appeal before the Appellate authority for advance ruling Maharashtra state (MAAAR), who vide its order No. MAH/AAAR/SS-RJ/19/2019-20 dated 13.12.2019 upheld the order passed by the lower authority. The Appellant challenged both these orders in writ petition No.1745 of 2020 before the High-court of judicature at Mumbai in which the Hon'ble court vide order dated 30.08.2021 observed and directed as under:

> *"We find that these orders to 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* ***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 matter was heard before the MAAR on 14.09.2021 where the Appellant again raised the same questions.

12. The MAAR through its order No. GST-ARA-120/2018-19/B-90 dated 10.11.2021 held as under;

- In respect of **Question (i),** it is held that the appellant has not relied on any case law decided under GST Act or any particular provisions or schedule entry or any particular notification and hence the activity of imparting medical education is covered by the scope "business".
- In respect of **Question (ii),** it is held that the appellant is liable to be registered.
- In respect of **question (iii) a,** it is held that the charges collected are exempt from tax.
- In respect of **question (iii)b** it is held that the charges are exempt from tax.
- In respect of **question No.(iii)c** it is held that the charges received from patients is taxable at the rate of 18%.
- In respect of **question No.(iii)d** it is held that nominal amount received for essential facilities is taxable at the rate of 18%.

GROUNDS OF APPEAL

13. The order passed U/S 98 of the Central Goods and Services Act 2017 and The Maharashtra Goods and Services Act 2017 since based on sheer Surmises, Conjectures, Self-imaginations and self-contradictions is bad in law and needed to be quashed.

14. The order passed U/S 98 of the Central Goods and Services Act 2017 and The Maharashtra Goods and Services Act 2017 is bad in law in as much as treating that providing Medical Education in terms of university mandate is Business.

15. The MAAR has failed to interpret the various definition and more particularly the provision of section 22, 23 and 24 and in result erred in concluding that the appellant is liable for registration under the GST act.

16. The MAAR has erred in holding that the amount received from patients towards nominal charges in order to make them eligible in getting concession in medical treatment is taxable @ 18% under the residual entry.

17. The MAAR has erred in holding that the nominal charges received from the activities which are not in the nature of business are taxable @ 18% as Rent.

18. The MAAR has failed to consider that the Appellant is covered by Sr. No. 1 under exempt service Notification No. 12/2017 dated 28.06.2017, and as such there exists no element of Taxable Service.

19. In respect of Question (i), It is held by the MAAR that Appellant has not relied on particular provision or schedule entry or any particular notification to prove that they are not covered under the scope of word "business". This finding is contrary to the material already placed on record which *inter-alia* referred to the definition of **Business** under Section 2(17), **Supply** under section 2(87) and meaning of "**in furtherance of business**". Further **the reference was also made to the various judicial pronouncements. The appellant submitted in detail on page No 14 of Application dated 27.01.2019 before the MAAR, as to how its activity cannot be held as carrying on any business. Further the Appellant has never sought the mandate on the strength that there is no pecuniary benefit.** If at all is to be proved that education is business, and that too in a situation where it is against the contention of Appellant affecting it substantially, then it should have been substantiated by the MAAR with reference to the Provisions and Authority on which they have relied. It is settled law that if the charging provisions fails then machinery provisions cannot be pressed into operation. As a result, since the MAAR came to crude conclusion that providing Education as per statutory mandate by the University is Business being erroneous.

20. In respect of **question No.(iii)c,** it is held by the MAAR that the charges received from patients is taxable at the rate of 18%. Against these charges, there is no element of service at the stage of receipt thereof, and are in the nature of consideration for the services to be made for treatment of illness, and thus cannot be considered as taxable @18%.

21. In respect of **question No.(iii)d,** it is held by the MAAR that nominal amount received for essential facilities is taxable at the rate of 18%. The MAAR ignored the materials placed on record, and did not consider the legally settled matter in this regard.

22. The MAAR is grossly incorrect in concluding that the providing medical education to the students amounts to "business" and with this mind set answered all the questions.

23. In an alternative if it is held that the findings of the MAAR are correct in respect of question No (i) and (ii) above then the reconsideration is needed to the facts of the question No. (iii) c where the amount received from patients is considered as taxable at the rate of 18% under the residuary entry whereas the same is related to treatment of illness and question No.(iii) d where the nominal amount, received on account of parking place, disposal of waste, is considered taxable @ 18% as rent.

24. The Appellant's activities and organizational structure has been explained in detail in Advance Ruling Application filed before the MAAR. Appellant will rely on various factual submissions made in this advance ruling application during the course of hearing of this appeal. These factual submissions are not being repeated here-in for the sake of brevity. However, the same may be please be treated as a part of submissions in this appeal too.

RESPONDENT'S SUBMISSIONS

25. The Jurisdictional Officer vide their letter dated 08.02.2022 have made the following submissions:

25.1 That the Appellant-Society and M/s. MGIMS are two separate and independent persons in so far as the GST law is concerned; and therefore, the contention of the Appellant-Society in as much as they and M/s. MGIMS may be treated as one and the same entity, and accordingly, the advance ruling application filed by them to seek clarifications in respect of the issues under questions may be considered and the questions posed therein may be answered, cannot be accepted;

25.2 As regards the issue pertaining to the registration of the Appellant-Society owing to the various activities/transactions undertaken by them wherein apart from the providing educational services and health care services, they are also engaged in other activities such as making space available for parking, banking and refreshment canteen for certain consideration, disposal of equipment/apparatus wastes against some consideration, it is submitted by the Respondent that a person has to obtain registration where even a small portion of services or goods sold by him are subject to GST. Therefore, in the present case, the Appellant have to register themselves under GST and are also bound to file GST returns as prescribed under the GST law, as they are engaged in the taxable supply of goods and services.

25.3 That the Appellant, i.e., Kasturba Health Society, is a society registered under the Societies Registration Act, 1860 and the Bombay Public Trust Act, 1950, whereas the M/s. MGIMS is a joint venture of the Central Government, State Government and the Appellant-Society; Therefore, both the Appellant and M/s. MGIMS are separate and different entities; Accordingly, Advance Ruling obtained for the one entity will not be applicable to the other entity;

ADDITIONAL SUBMISSIONS DATED 23.09.2022

26. The Appellant filed the additional submissions dated 23.09.2022 wherein they reiterated their earlier stand that the *nominal* ***charges received from patients*** *(who is an essential clinical materials for education laboratory) towards an "Unparalleled Health Insurance Scheme" to provide them the benefit of* ***affordable and concessional rates for investigations and treatment*** *would fall within the meaning of "supply" eligible for exemption under the category of "health care services"* in terms of entry at Sl. No. 74 of the exemption Notification No. 12/2017-C.T. (Rate) dated 28.06.2017. They also cited

various court judgments to substantiate their contention that their activities regarding **"arogya Sewa Scheme"** would not be considered as an independent venture to be categorized as business and the same is an integral part of health care services provided by them, and accordingly, the same would be considered as exempt supply.

27. As regards the rental income received from the parking area and for letting their property for running a canteen to cater foods to the patient and their relatives, the Appellant submitted that the same are not primary services, but those are incidental activities undertaken to carry out the main activity, i.e., health care services, therefore, the said incomes will also be exempt from levy of GST.

PERSONAL HEARING

28. The personal hearing in the matter was conducted on 25.11.2022, which was attended by Mr. Rajendra Bhutada on behalf of the Appellant. Shri Rajendra Bhutada apart from reiterating the earlier submissions made while filing the present appeal, also submitted with regard to the Unparallel Health Insurance Scheme floated by them that the nominal charges received by them under the said scheme so as to provide the benefit of concessional rates for investigations and treatment of the disease, may be treated as advance towards the provision of the health care services which would be provided by them to the subscribers of this scheme in future. He further added that though the name of Scheme includes the word insurance, but it is an advancement of health care service to specified class of citizens. The subscription amount charged under the pertinent scheme, is nothing but the advances towards the health care services to be provided and since the health care services are exempted in term of Sr. No. 74 of the Notification 12/2017 Central Tax(R) – dt. 28/6/2017, the subscription amount charged under the pertinent scheme will also be rightly eligible for exemption the said entry at Sl. No. 74 of the Rate Notification.

DISCUSSIONS AND FINDINGS

29. We have carefully gone through the entire appeal memorandum containing facts of the case and the submissions made by the Appellant vis-a-vis the MAAR Order dated 10.11.2021 pronounced in respect of the questions raised by the Appellant in the advance ruling application filed by them.

30. On perusal of the Appeal memorandum encapsulating the facts of the case and the grounds of Appeal along with the MAAR Order No. GST-ARA-120/2018-19/B-90 dated 10.11.2021, it is noticed that the MAAR has disposed the subject advance ruling application in pursuance to and in compliance of the Hon'ble Bombay High Court Order dated 30.08.2021 in the Writ Petition No. 1745/2020 filed by the Appellant, i.e., M/s. Kasturba Health Society, wherein the Hon'ble High Court has ordered to answer the question posed by the petitioner society in respect of which advance ruling was solicited.

31. The first issue before us is as to whether the impugned activities by the Appellant wherein they are providing educational services by way of imparting medical education through MGIMS, and providing the health care services through Kasturba Hospital, can be construed as "Business" in terms of the provisions of CGST Act, 2017. To decide this issue, we examined the definition of "Business" provided under section 2(17) of the CGST Act, 2017, which is being reproduced herein under:

"2. In this Act, unless the context otherwise requires, —

.....

(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;

..... "

31.1 On perusal of the aforesaid definition of the term "business", it is noticed that GST law has provided an inclusive definition to the term "business", which signifies that the scope of term "business" is not restrictive, and hence, the term "business' would not only include the activities as per its ordinary or natural meaning but also the activities, such as any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit, as enumerated in its definition (Supra). Thus, from the definition, it is seen that the term "business" also includes any "profession" whether the same is carried out for pecuniary benefit or otherwise. Since the term "profession" is not defined under the CGST Act, 2017, we would like to resort to its dictionary meaning.

*Meaning of the term "profession" as per the "**Cambridge Dictionary**":*
Any type of work that needs special training or a particular skill, often one that is respected because it involves a high level of education.

*Meaning of the term "profession" as per the "**Collins Dictionary**":*
A profession is a type of job that requires advanced education or training.

31.2 Thus, on perusal of the aforesaid dictionary meaning, it is amply clear that the Appellant-Society through its establishment MGIMS is undertaking such job or work which require the service of highly educated, trained, and skilled persons in the form of doctors hired by them for imparting the medical education to the students, hence the said work done by the Appellant can be said to be in the nature of "profession", and accordingly, will be construed as "business" in terms of the GST provisions. Similarly, the provision of health care services by the Appellant through its another establishment Kasturba Hospital can also be deemed as "profession" as envisaged under the definition of the term "business" provided under the GST law, and therefore, the said activity of the Health Care Services provided by the Appellant will be construed as "business" under the CGST Act, 2017.

31.3 The MAAR has also held that the said activities of imparting medical education and health care service performed by the Appellant is in the nature of "business" in terms of section 2(17) of the CGST Act, 2017. However, the Appellant-Society against this observation made by the MAAR have contended that since they are a charitable trust registered under the Society Registration Act, 1860 and Bombay Public Trust Act, 1950, with the sole objectives of fulfilling the heath needs of the rural India, and are not involved in any commercial activities or transactions, therefore, they were never treated as a dealer under the erstwhile Maharashtra VAT regime considering that their activities were not in the nature of business as envisaged under Section 2(5-A) of the Bombay Sales Tax Act, 1959, and accordingly, they were not obliged to comply with provisions of the erstwhile Maharashtra VAT law.

31.4 In this regard, we would like to compare the definition of business provided under the erstwhile Bombay Sales Tax Act, 1959 and that provided under the CGST Act, 2017, for understanding the distinctions between the meaning and scope of the term "business", if any, under the aforesaid two laws.

Definition of the term "business" provided under the erstwhile Bombay Sales Tax Act, 1959:

Section 2:

(5A) "business" includes any trade, commerce or manufacture or any adventure of 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 [8] or trade, commerce or manufacture and any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern [9] and any transaction in connection with, or incidental or ancillary to, the commencement or closure of such trade, commerce, manufacture, adventure or concern;

31.5 Now, on perusal of both the definitions of the term "**business**", it is noticed that the definition of the term "**business**" under the erstwhile Bombay Sales Tax Act, 1959, does not include the entries "**profession and vocation",** which are present in the definition of the term "business" under the CGST Act, 2017, thereby, rendering much wider meaning and scope to the term "business" under CGST Act, 2017. Thus, the term "business" under the CGST Act, 2017 is wide enough to include the activities of the Appellant-Society as discussed hereinabove. Thus, the contention of the Appellant is not tenable.

32. Now once it has been established that the activities undertaken by the Appellant-Society are in the nature of business, we will proceed to examine as to whether the said activities of educational services and health care services undertaken by the Appellant will be construed as "**supply**" in terms of section 7(1)(a) of the CGST Act, 2017, or not. For this, we would like to refer to section 7(1)(a), ibid., which reads as under:

Section 7

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

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

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

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

32.2 As it is an admitted and undisputed fact that the Appellant-Society are providing the education and health care services through its two arms, namely, MGIMS and Kasturba Hospital, respectively. Further, there is also no doubt about the Appellant-Society being a person in term of its definition provided under section 2(84) of the CGST Act, 2017, which *inter alia* includes the society. Moreover, it is also evident that the said activities are being performed by the Appellant-Society in the course of their business as the said activities comprising imparting of medical education to the students to address the shortage of doctors in rural India, and providing the health care services to the poor rural and urban people are the sole objectives of the Appellant-Society. Thus, it is opined that the activities of the Appellant can be rightly construed as supply in term of section 7(1)(a) of the CGST Act, 2017.

33. Now, coming to the taxability issue of the impugned supply of services, it is noticed that the activities of imparting medical education to the students will squarely fit under the entry at Sl. No. 66 of the exemption Notification No. 12/2017-C.T. (Rate) dated 28.06.2017, the relevant entry of which reads as under:

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (percent)	Conditions
66	Heading 9992	Services provided - (a) by an educational institution to its students, faculty and staff;	NIL	NIL

Further, the definition of the term "educational institution" is provided under clause (y) of the definition section of the aforesaid exemption notification, which reads as under:

"educational institution" means an institution providing services by way of,-

(i).....

(ii)education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;

(iii).....

33.1 As the services of medical education provided by the Appellant-Society is recognized by the Maharashtra University of Health Sciences, Nashik and Nagpur University, MGIMS, an establishment of the Appellant-Society, falls under the category of "**educational institution**" as defined under the GST law, and accordingly, it is held that the medical education services provided by the Appellant to the students will attract nil rate of GST as per the aforesaid entry 66, ibid.

33.2 Further, the second activities of the health care services provided by the Appellant-Society through its establishment, Kasturba Hospital, will squarely fit under the entry at Sl. No. 74 of the exemption Notification No. 12/2017-C.T. (Rate) dated 28.06.2017, the relevant entry of which reads as under:

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (percent)	Conditions
74	Heading 9993	(a) 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

Further, the definition of the term "health care services" is provided under clause (zg) of the definition section of the aforesaid exemption notification, which reads as under:

(zg)health care services means 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 and includes services by way of transportation of the patient to and from a clinical

establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma;

33.3 Since the Appellant-Society, through its establishment Kasturba Hospital, are engaged in providing services by way of *diagnosis or treatment or care* of the patients, hence, their services can be rightly termed as "health care services", and accordingly, it is held that the said services will be exempt from the payment of GST in term of the entry at Sl. No. 74, ibid.

33.4 Furthermore, since the impugned activities of the Appellant pertaining to imparting of medical education and health care services as discussed hereinabove have been held to be supplies in terms of section 7(1)(a) of the CGST Act, 2017, the said activities would also be considered as "outward supply" for the Appellant in terms of the provisions of section 2(83) of the CGST Act, 2017. Therefore, the fees and other charges received from students, and recoupment charges received from patients would accordingly constitute consideration for outward supply.

33.5 In view of the above, it is observed that the core services of the Appellant-Society, viz. provision of medical education to the students and provision of health care services to the patients, are exempted supplies.

34. Now, we proceed to examine the nature and taxability of the other activities/transactions performed by the Appellant and covered under question no. (iii)(b), (iii)(c) and (iii)(d). They are enumerated as under:

I. 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 [Question (iii) (b)];

II. the nominal charges received from patients towards an "Unparallel Health Insurance Scheme" so as to provide them the benefit of concessional rates for investigations and treatment of the disease [Question (iii) (c)];

III. the nominal amount received for making space available for facilities, such as Banking, Parking, Refreshment etc. and the amount received on account of disposal of wastes [Question (iii) (d)];

35. Asregards to the first activity, mentioned at **I [Question (iii) (b)]** above, where the Appellant are recovering 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, it is observed that the said activities would fall within the meaning of "composite supply" qualifying for exemption under the category of "educational and/or health care services", it is opined that the aforesaid services are indispensable for rendering the principal supply of health care services, and hence, the same may aptly be considered as ancillary services to the main services of health care services being provided by the medical professionals of the Appellant's hospital. Thus, the said 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", as provided under section 2(30) of the CGST Act, 2017, wherein the main supply is health care services, and thereby, would qualify for exemption under the category of "health care services" in terms of Sl. No. 74 of the Notification No. 12/2017-C.T. (Rate) dated 28.06.2017.

36. As regards to the second activity, mentioned at **II [Question (iii) (c)]** above, wherein the Appellant floats a scheme, namely, "Unparallel Health Insurance Scheme" under which the Appellant charges a nominal specific amount from the public who intends to avail the health care services from the Appellant in future at the concessional rate, the MAAR has observed that the Appellant have not obtained any license or approval from the IRDAI (Insurance Regulatory & Development Authority of India) so as to run any insurance business on their account, therefore, the said scheme cannot be considered in the nature of insurance services, and accordingly, the MAAR has classified the said activities under residuary entry at Sl. No. 35 of the Notification No. 11/2017-C.T. (Rate) dated 28.06.2017, and accordingly, has further held that the such charges collected towards the subject scheme will be leviable to GST at the rate of 18%(CGST @9%+SGST @9%). In this regard, we partially concur with the observation of the MAAR wherein they have observed that the Appellant have not obtained any license or approval from the IRDAI (Insurance Regulatory & Development Authority of India) so as to run any insurance business on their account, therefore, the said scheme cannot be considered in the nature of insurance services. However, we seek to differ with the observation of the MAAR regarding the classification of the impugned services wherein the MAAR has classified the impugned services under the heading 9997 at Sl. No. 35 of the Notification No. 11/2017-C.T. (Rate) dated 28.06.2017. On the other hand, we concur with the Appellant's contention wherein the Appellant have contended that the said nominal amount being charged by them are in the nature of advances towards the provision of the health services which would be provided by them to the subscribers of the said schme, and hence is eligible for exemption under the entry at Sl. No. 74 of the exemption Notification No. 12/2017-C.T. (Rate) dated 28.06.2017.

37. As regards to the third activity, mentioned at **III [Question (iii) (d)]**above, wherein the Appellant is receiving a nominal amount for providing space for the facilities, like Banking, Parking, Refreshment Canteen, etc., it is observed that the said activities are not directly provided to the students or patients, who are the recipients of the main services of the Appellant, i.e., the educational services and health care services, which have been held as exempted services hereinabove, rather the said services of renting of immovable property by way of providing space for the facilities like banking, parking, refreshment canteen, have been provided to the third parties, who are running these establishments on their own account. Now, we would like to examine as to whether the said renting of immovable property services can be construed as ancillary or incidental services to the main services of the educational services or health care services provided by the Appellant, and thereby, whether the said services could be construed as part of the composite supply as envisaged under section 2(30) of the CGST Act, 2017. The provisions under Section 2(30), ibid. is being reproduced hereunder:

(30) "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

37.1 On perusal of the aforesaid definition of the "composite supply", it is observed that a composite supply has following essential ingredients:

(a) It should be a supply made by a taxable person to a recipient;

(b) It should consist of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business;

(c) One of its supplies should be a principal supply;

37.2 Thus, on careful perusal of the aforesaid definition of the term "composite supply" and the essential conditions enumerated hereinabove, it is seen that the composite supply comprising two or more supplies of goods or services or both, or any combination thereof should be made by a taxable person to a recipient. However, in the instant case, the main services of the Appellant, i.e., educational services and health care services are provided to the students and patients whereas the services of renting of immovable property are provided to some third party consumers, who run their establishments on their own account on the land made available to them by the Appellant against certain consideration. Thus, it is apparent that these services under consideration are not provided to a single recipient as mandated under the provisions of composite supply under section 2(30) of the CGST Act, 2017, and accordingly, cannot be said to be part of the composite supply. Thus, the said service of renting of immovable property will be considered as separate and independent supplies, and will be taxable at the applicable rate of 18% in terms of the item (iii) bearing the description "Real estate services other than (i) and (ii) above" of the entry at Sl. No. 16 of the Notification No. 11/2017-C.T. (Rate) dated 28.06.2017.

37.3 Now, as regards the activity, wherein the Appellant receive an amount on account of disposal of wastes such as medical equipment, apparatus, and other instruments, etc., by selling them to the interested vendors, it is found that MAAR has not answered this query. In this regard it is observed that the said activities of the supply of the scrap to the vendors are not being made to the students or the patients, who are the recipients of the exempted supply of educational services or health care services respectively, and therefore, the said supply can aptly be construed as independent and separate supply, attracting the levy of GST thereon at the applicable rate prescribed under Notification No. 01/2017-C.T. (Rate) dated 28.06.2017.

38. In view of the above discussions, it is observed that the Appellant-Society are rendering exempted services as well as taxable services. Hence, it is concluded that the Appellant-Society are liable to take registration in terms of section 22(1) of the CGST Act, 2017 provided their aggregate turnover exceeds the threshold limit prescribed under the said Act.

39. Thus, in view of the above, we pass the following order:

ORDER

40. We, hereby, concur with the impugned advance ruling pronounced by the MAAR in respect of the question no. (i), (ii) and (iii)(b).

41. Furthermore, we modify the ruling of the MAAR with regard to question number (iii)(a), (iii)(c) and (iii)(d), and hold that-

i. The fees and other charges received from students and recoupment charges received from patients would constitute as a consideration for "outward supply" as defined in section 2 (83) of the CGST Act, 2017 and the supply of educational services or health care services, against which both these charges are collected by the Applicant, are exempted supplies in terms of the entries at Sl. No. 66 and Sl. No. 74 of the Notification No. 12/2017-C.T. (R) dated 28.06.2017 **[Answer to Question (iii) (a)].**

ii. The charges collected under the "Unparallel Health Insurance Scheme" are to be considered as advance towards the provision of the health care services to the subscribers of this scheme, and accordingly, any amount collected towards this scheme will not be subjected to levy of GST in terms of the entry at Sl. No. 74 of the exemption Notification No. 12/2017-C.T. (Rate) dated 28.06.2017 **[Answer to Question (iii) (c)].**

iii. The amount received by the Appellant for rendering renting of immovable property services will be considered as separate and independent supplies, and will be taxable at the rate of 18% in terms of the item (iii) bearing the description "Real estate services other than (i) and (ii) above" of the entry at Sl. No. 16 of the Notification No. 11/2017-C.T. (Rate) dated 28.06.2017. whereas, the charges received against the disposal of wastes will be subject to levy of GST as the supply of wastes to the vendors would be construed as independent and separate supply, attracting the levy of GST at the applicable rate prescribed under Notification No. 01/2017-C.T. (Rate) dated 28.06.2017 **[Answer to Question (iii) (d)].**

(RAJEEV KUMAR MITAL)
MEMBER

(Dr. D.K. SRINIVAS)
MEMBER

Copy to the:

1) **Appellant;**
2) **AAR, Maharashtra**
3) **Pr. Chief Commissioner, CGST and Central Excise, Mumbai Zone.**
4) **Commissioner of State Tax, Maharashtra.**
5) **Assistant Commissioner, CGST &C.Ex, Division- Hingna, Nagpur-1.**
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