

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/SS-RJ/19/2019-20

Date- 13.12.2019

BEFORE THE BENCH OF

(1) Smt. Sungita Sharma, MEMBER

(2) Shri. Rajiv Jalota, MEMBER

GSTIN Number	27AAATK2046G1ZV
Legal Name of Appellant	M/s. Kasturba Health Society.
Registered Address	Kasturba Health Society, Sevagram Road, Sevagram, Wardha-442102
Details of appeal	Appeal No. MAH/GST-AAAR-19/2019-20 dated 16.09.2019 against Advance Ruling No. GST-ARA-120/2018-19/B-51 dated 04.05.2019
Jurisdictional Officer	Assistant Commissioner, Division Hingna, CGST, Nagpur-I

PROCEEDINGS

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

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.

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 "the CGST Act and MGST Act"] by **M/s. Kasturba Health Society.** (herein after referred to as the "Appellant") against the Advance Ruling No. GST-ARA-120/2018-19/B-51 dated 04.05.2019.



BRIEF FACTS OF THE CASE

1. The Constitution of India, though promised, the implementation of the effective health delivery system to the rural masses in general and unprivileged in particular. 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.
2. In response to Government of India's Initiatives to fulfil its constitutional obligations which is followed by the offer, the **Kasturba Health Society (hereinafter referred to as "Appellant 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**.
3. 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.
4. The Appellant exists 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 Fees from Students and Patients. The Appellant is having its set up in form of "Medical College" named as "Mahatma Gandhi Institute of Medical Sciences", at Village Sewagram, Dist. Wardha, which is attached with clinical laboratory named as "Kasturba Hospital".
5. 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.

6. The appellant society since solely engaged in education and thus was not obliged to get registered under The Bombay Sales Tax Act, 1959, Service Tax Act and also under the Maharashtra Value Added Tax Act, 2002. However, on introduction of GST w.e.f. 1.7.2017, 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**.
7. 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. Then, the jurisdictional GST authorities have issued one after other 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. Thereafter on legal advice, the appellant had decided to thrash out the issue relating to the applicability of GST Law to the Institution in legal frame work and hence the application was made before the Honourable Bench of Maharashtra Authority for Advance Ruling for adjudication of the matter in the larger interest of the institution.



8. Following questions were framed and referred for the consideration by the Honourable Bench of Maharashtra Authority for Advance Ruling duly constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017.

- 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 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.
- 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 – 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, 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.”

9. The Hon'ble Advance Ruling Authority through its order dated 4th May 2019, came to conclusion about the questions in chronological order as under that: -

- a. the Applicant is a “**Kasturba Health Society**” whereas the educational and charitable activities are carried out by the “**Mahatma Gandhi Institute of Medical Sciences**” (MGIMS) and both of them are **Two Separate Entities** on the basis of submission of the appellant and hence the applicant cannot be said to be satisfying all the criterion of “Educational Institution”. And by concluding this, main question whether the 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, is not answered.
- b. In view of the finding that the Kasturba Health Society is not Educational Institution the Appellant is treated as liable to get registered if the Turnover exceeds the Threshold Limits.



- c. The Question No (iii) (a) and (iii)(b) are not answered on the analogy that the supply is not made by the Appellant but by the **MGIMS** and as such cannot apply for Advance Ruling and hence the question is rejected, being not maintainable.
- d. In respect of question No (iii) (c) and (iii)(d) initially it is concluded that it is not clear from the submission that who are collecting the charges and immediately it is found from the submissions that the charges are being collected by the MGIMS/Kasturba Hospital and since it is presumed that the supply is not made by the Applicant and thus concluded that it cannot apply for Advance Ruling and hence the question is rejected, being not maintainable.
10. Being aggrieved by the Impugned Order, the Appellant has filed the appeal before this appellate authority making pray to set aside the said impugned order passed by the Advance Ruling Authority and give further order in the facts and circumstances of the case on the following grounds: -

GROUND OF APPEAL

11. 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 as much as treating that the Mahatma Gandhi Institute of Medical Sciences as a Separate and Distinct person, is concerned.
12. 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 treating that the Kasturba Heath Society does not satisfy the Criterion of "Educational Institution " and thus holding it liable to be registered Under the GST Act 2017, is concerned.
13. The Hon'ble Advance Ruling Authority has failed to bring the cognizable material on record in support of its contention that Kasturba Heath Society does not satisfy the Criterion of "Educational Institution "and thus erred on facts and in law in treating that the appellant doesn't not provide any services.
14. The Hon'ble Advance Ruling Authority has erred in not answering the questions No (iii) a to (iii) d raised before it, as not maintainable by misdirecting itself and further erred



in law by holding that the Mahatma Gandhi Institute of Medical Sciences since having not made any application for Advance Ruling, the further conclusion that application is not maintainable, is also perverse in law.

15. The Hon'ble Advance Ruling Authority since not raised the issue of Separate Legal Entity neither at the time Admission of Application nor during the Final Hearing and as such the conclusion drawn by it is without providing an opportunity to the Appellant to convey its own stand and as such the order passed by it is against the principles of natural justice and as a result is Bad in Law.
16. The Hon'ble Advance Ruling Authority has passed the order ignoring the legal provisions as well as factual position and is completely against the provisions of law and thus defeated the very purpose of advance ruling which is meant to provide the solutions to resolve the disputed matters as against this it has created a **new dispute** as to whether the Kasturba Health Society and MGIMS are separate and distinct person without appreciating the facts of the appellant where the Mahatma Gandhi Institute of Medical Sciences and Kasturba Hospital are only titles assigned to the college and clinical laboratory respectively for the reasons mentioned above, which is in fact never considered as a separate legal entity under any law, those are applicable to the Appellant.

Prayer

17. The Appellant therefore prays that;
 - i) The Hon'ble Appellate Authority for Advance Ruling be pleased to quash and set aside the order dated 04.05.2019 passed by the Hon'ble Advance Ruling Authority;
 - ii) The Hon'ble Appellate Authority for Advance Ruling be pleased to determine and answer the questions already raised by the Appellant before the Hon'ble Advance Ruling Authority, which are well within the preview of section 95 of the CGST/MGST Act 2017.
 - iii) The Hon'ble Appellate Authority for Advance Ruling be pleased to rely on the submissions made before the Hon'ble Advance Ruling Authority in respect of these various questions and the same may be treated as a part of this appeal.



- iv) The Appellant craves the leave to add, alter, amend or withdraw any of the grounds of appeal at the time of hearing and to make further written submissions.

Appellant's Additional Submissions dated 09.12.2019

18. ***Ground -1:- 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 as much as treating that the Mahatma Gandhi Institute of Medical Sciences as a Separate and Distinct person, is concerned.***
- 18.1 It is commonly known fact that for undertaking any philanthropic activity in the field of Education and Medical one has to get itself registered under The Societies Registration Act, 1860. Even after coming federal state of Government in India the provision of said Act instead of repealing, is being implemented by every State Government as well as Central Government duly supplemented by the Rules for monitoring and regulating, the institutions engaged into carrying out the Educational and Medical activity. The Society registered under this Act is only a legal entity which can sue and to be sued for each and every official matter/activity and thus there is no separate or an independence existence of the Society from it's any one or more activities. In order to have more monitoring and control over the affairs in the larger Public Interest the registered Society, further, automatically gets registered under The Bombay Public Trust Act, 1950.
- 18.2 The matter already gone on record that the Kasturba Health Society (here-in-after referred as "KHS") is registered under The Societies Registration Act 1860 and also under The Bombay Public Trust Act, 1950 for the purpose of delivery of Medical Education for Rural Health Care. The known Gandhian followers and Medical Personnel such as Dr. Sushila Nair, Dr. Jivaraj Mehta, Dr. Waldekar, Dr. Ranade had given their valuable contribution in the delivery of health care to the rural masses forming part of under privileged society through Medical Education by producing doctors who are attending rural health.



18.3 When the Government of India realized that in spite of intensive efforts in the direction of delivery of health care to the rural masses, though promised through constitution of India, no much worth noticing was achieved and then the committee was set up to find out the reasons therefor and finally concluded that there was acute shortage of Doctors who are capable of understanding the real social economics problems generating health related issues of population. In the context of finding of the committees the Government of India and Govt. of Maharashtra both have decided to set up of project to impart the medical education in systematic manner through which the medical person will be trained with rural background and to make them able to address the health related issues of rural masses. It was simultaneously decided way back as 1968 to provide the financial assistance to the extent of 75 % for implementing the said project and accordingly the management thereof would be exclusively vested with the society which is registered legal entity engaged into the field of medicine as such in this endeavor the entire control is vested with the Kasturba Health Society.

18.4 Thus the said project of Medical Education for rural masses is brought in to existence on the principle of public private partnership in which KHS was considered as parent and legal entity and the project is titled as "Mahatma Gandhi Institute of Medical Sciences" (Referred to as MGIMS) as would be evident from the Notification issued by Govt. of India on 28th February 1976 .

18.5 It is matter of record that all the technical-nontechnical staff working for the implementation of the project titled as "MGIMS" are the employees of Kasturba Health Society only where they will sue or be sued through the Kasturba health Society, a legal entity. MGIMS is not an independent organisation 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, have been owned and provided by KHS right from inception of the MGIMS. In other word words MGIMS does not have an independent existence than 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 March, 2015 in Civil Appeal NO.5167 OF 2008 to the effect that an educational society, 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 the 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. (Annexure-I)
- P.F. Registration, 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 Govt. of India has issued the notification for recognizing the Research programme titled that MGIMS 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 known as revenue/mutation records are concerned. (Annexure-IX)
- The State Govt. has empowered KHS to implement its various public Health related schemes is general 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 are registered 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 formed 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 and therefore the conclusion drawn by the honorable advance ruling authority is not only completely unjustified but is entirely misleading, confusing and without having any understanding of legal position well as factual position and hence the stand taken by them is needed to be set aside.



19. ***Ground-2:- 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 treating that the Kasturba Heath Society does not satisfy the Criterion of "Educational Institution" and thus holding it liable to be registered Under the GST Act 2017, is concerned.***

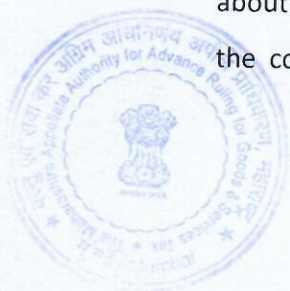
In view of details submission given here-in-above and further to the matter gone on record as described in submission on P.No.9 10 (Para 1 .04) the appellant satisfy the criteria of educational institution which is mandated and accepted by the Commissioner of Sales Tax through the DDQ-10/05/Adm-5/116/B-1 Mumbai dated 06-03-2006 in the case of Bombay Natural History Society, Mumbai which find reference on P.No. 17 & 18 as well as in the body of order on P.No. 17 & 18. Further the courts have also decided from time to time in the same manner. The issue in question since not in dispute therefore there is no much material is available on record. In view of the above the findings of The Hon'ble Advance Ruling Authority is not justified.

20. ***Ground-3: - The Hon'ble Advance Ruling Authority has failed to bring the cognizable material on record in support of its contention that Kasturba Heath Society does not satisfy the Criterion of "Educational Institution "and thus erred on facts and in law in treating that the appellant doesn't not provide any services.***

The Hon'ble Advance Ruling Authority while concluding that the Kasturba Heath Society does not satisfy the Criterion of "Educational institution" has not brought on record any cognizable material/factual matrix from which it is evident that the appellant does not satisfy the Criterion of "Educational Institution" and as such there is no justification for the conclusion drawn.

21. ***Ground-4:- The Hon'ble Advance Ruling Authority has erred in not answering the questions No (iii) a to (iii) d raised before it, as not maintainable by misdirecting itself and further erred in law by holding that the Mahatma Gandhi Institute of Medical Sciences since having not made any application for Advance Ruling, the further conclusion that application is not maintainable, is also perverse in law.***

In fact the appellants registered under the Goods and Services Tax Act 2017 and is liable for all consequences and penal actions under said act and further concerned about the issues those have arisen and as such the application made by it is well within the competency of section 97 of the CGST /SGST Act 2017, and accordingly, the



Hon'ble Advance Ruling Authority was duty bound to answer the questions raised by the appellant and thus not answering the same merely on the self-imagination that the appellant and MGIMS are separate and distinct entity is completely departure from the obligation cast upon it in the words, spirit and the mandate of section 97 of the said act. In view of this fact, the appellate authority is requested to answer the question raised by the appellant.

22. ***Ground-5:- The Hon'ble Advance Ruling Authority since not raised the issue of Separate legal Entity neither at the time of Admission of Application nor during the Final Hearing and as such the conclusion drawn by it is without providing an opportunity to the Appellant to convey its own stand and as such the order passed by it is against the principles of natural justice and as a result is Bad in Law.***

The Hon'ble Advance Ruling Authority has not raised the issue of Separate Legal entity neither at the time Admission of Application nor during the Final Hearing. Had this issue been raised at that time the proper explanation would have been offered along with necessary supporting documents. In view of this fact the conclusion drawn by it is without providing an opportunity to the Appellant to convey its own stand therefore as such the order passed by it is against the principles of natural justice and as a result is bad in Law and it is requested to set aside the complete.

Personal Hearing

23. A personal Hearing in the matter was conducted on **09.12.2019**, wherein Shri Rajendra Bhutada (C.A), the representatives of the Appellant, reiterated their earlier written submissions as well as the submissions made on the date of the personal hearing. The jurisdictional officer neither attended the said P.H. nor made any submissions before us.

Discussions and Findings

24. At the outset of proceedings, we observe that there is a delay of 26 days in filing the said appeal by the appellant and the appellant has, accordingly, filed an application for condonation of the delay which they have attributed to non-availability of the online form for filing appeal, which was not operational at that time, and which resulted into considerable loss of time in making enquiry regarding the mechanism to upload the



appeal electronically, which, however, turned out to be futile exercise, as the GSTN Help Desk, in pursuance to the grievance lodged by us with respect to the filing of the appeal, reverted to suggest us to file the present appeal manually, which in-turn caused more delay as they took some more time to arrange the tickets for Mumbai. The Appellant, further, submitted that they had taken utmost care to ensure the filing of the present appeal within the time limit of 30 days prescribed under GST Law, which is evident from the fact that the prescribed appeal fees had been paid on 19.08.2019 itself, i.e. within the prescribed timeline of 30 days for filing the appeal. They submitted that the said delay of 26 days in filing the present appeal is not intentional on their part, therefore, this delay of 26 days may be condoned and the present appeal may be admitted, which is being filed within the maximum permissible time of 60 days including the maximum condonation period of 30 days allowed under the proviso to sub-section 2 of section 100 of the CGST Act, 2017.

25. We do find merit in the grounds put forth by the Appellant with regard to the condonation of delay of 26 days, caused in filing the present appeal. Therefore, we are satisfied to the extent that the appellant was prevented by a sufficient cause from presenting the appeal within period of thirty days from the receipt of the impugned ruling of AAR, and accordingly allow the appellant to present the appeal within a further period of 30 days in terms of proviso to sub section 2 of section 100 of the CGST Act 2017.
26. We have gone through the entire case records encompassing the facts of the case, documents placed on the record, and the submissions made by the Appellant. We have also gone through the impugned Advance Ruling order, wherein it was, inter-alia, held by the Advance Ruling Authority that Appellant, i.e. Kasturba Health Society, and MGIMS, the medical college run by the Appellant, are two separate entities, and since all the charitable and educational activities are carried out by M/s. MGIMS, and not by the Appellant, therefore, the Appellant, i.e. M/s. Kasturba Health Society would not be considered as an Educational Institution, and accordingly, the Appellant has been held liable to get registered under the GST Act provided their turnover exceeds the threshold limit prescribed under the GST law.



27. On perusal of the entire submissions and contentions made by the Appellant herein above vis-à-vis the findings and rulings of AAR, the moot issue before us is as to whether under the provisions of the GST Act, the Appellant, i.e. Kasturba Health Society, and M/s. MGIMS, the medical college run by the Appellant can be considered as separate persons/entities or not. For this purpose, we will first analyze the constitution and character of both these entities. Now, as per the records placed before us, and submissions made by the appellant in this regard, it is apparent that M/s. Kasturba Health Society was constituted in the year 1964 with the main objective of catering to the health needs of rural population of India. It is registered under the Societies Registration Act, 1860 and Bombay Public Trust Act, 1950. On the contrary, M/s. MGIMS is a medical institution, which is a joint venture of the Central Government, and the State Government of Maharashtra, and the Appellant Society having the agreed arrangement of funding the said project in the ratio of 50:25:25 respectively. The above said 25% of the operational cost to be borne by the Appellant Society will be collected from the fees paid by the students and recoupment charges received from the patients availing treatment in the said medical institute. The operation of this medical institute is controlled and regulated by the Governing Council, which comprises of 10 members and a chairman. Out of these 10 members, 5 members are nominated by the Appellant Society, while 5 members are nominated from the Central Government and the State Government, which, inter alia, regulate and supervise the teaching and training procedures adopted by the said Medical Institution.
28. From the above, it is adequately clear that the Appellant Society and M/s. MGIMS, the medical institute, which is a joint venture undertaking of the Central Government, State Government and the Appellant Society, and which is controlled and regulated by the Governing Council comprising of members, which also includes the nominated members from the Central Government and State Government besides the members nominated from the Appellant Society are separate entities/persons having their own role and functions. Thus, we completely agree with the AAR findings in this regard, who also observed the above said facts, and accordingly, inferred that the Appellant society and M/s. MGIMS are two separate and independent persons in so far as the GST law is concerned. We also agree with the AAR observation, wherein they held that



it is MGIMS, which is undertaking the supply of the providing medical education and health care services, and not the Appellant society. Thus, MGIMS and the Appellant Society are two separate establishment.

29. The above findings also find support from the judicial pronouncements cited by the Appellant in their advance ruling application filed before AAR, wherein they have cited the judgment passed by the Hon'ble Bombay High Court, Nagpur Bench in the case of *Ajay Gambhir & Ors. Vs. Dean, Mahatma Gandhi Institute of Medical Sciences, Sevagram, & Ors., 1985*, wherein the Hon'ble High Court in para 11 observed as under: *"Thus, we see no difficulty whatsoever in holding that Respondent No. 12, i.e., (MGIMS) is a "state" within the meaning of Art. 12."* Further, vide para 12 of the said Judgment, Hon'ble Bombay High Court, Nagpur Bench, observed that- *"One of the important tests to be applied is a functional test. Imparting higher medical education is the function of the Institute. This education is essentially concerned with national health. Articles 41 and 47 in Chapter IV deal with education and public health They embody some of our national goals for fulfilling which public funds are being utilized by the Government. This education is regulated by several enactments with the sole object of achieving best standards. Those obtaining degree will be entitled to deal with human life at its crucial stage. Thus, the Institute in one sense is performing a statutory duty and is therefore also an instrumentality of "State".*
30. Further, in the case of Kuldeep Sukhdev in the Writ Petition No. 2951 of 1992, Hon'ble Nagpur Bench of the Bombay High Court held that- *" The Mahatma Gandhi Institute of Medical Sciences, Sevagram has been held to a public authority and/or an instrumentality of State within the meaning of Article-12 of the Constitution of India vide judgment of the Hon'ble High Court of Judicature at Bombay, Nagpur Bench in the case of Ajay Gambhir (cited above)"*
31. Thus, from the above mentioned judicial pronouncements, it is amply clear that MGIMS, which has been held to be "State" attributable to its function of providing medical education, is separate entities from the Appellant Society, as the respondent in these case were MGIMS, not the Appellant Society and the above observations were made by the Hon'ble High Court in respect of MGIMS, and not in respect of the Appellant Society.



32. The Appellant society, in their defense, have, inter alia, contended that the management of MGIMS would be exclusively vested with the society which is a registered legal entity engaged into the field of medicine as such in this endeavor the entire control is vested with the Kasturba Health Society. As regards this contention, it is observed that though the management of MGIMS is done by the Appellant society, but, the operation of the medical institute, in so far as the teaching and training procedures are concerned, is controlled and regulated by the Governing Council, comprising of 10 members, out of which 5 members are nominated by the Central Government and the State Government, which clearly indicates that not the entire control of the institute is vested with the Appellant society. Thus, the above contention of the Appellant is fallacious, and therefore, is not tenable.
33. It is inter alia further submitted by the Appellant that the said project of Medical Education for rural masses is brought in to existence on the principle of public private partnership in which KHS was considered as parent and legal entity and the project is titled as "Mahatma Gandhi Institute of Medical Sciences" (Referred to as MGIMS) as would be evident from the Notification issued by Govt. of India on 28th February 1976. The above submission made by the Appellant further underpins our findings that MGIMS, which as per the Appellant themselves, is a public private partnership, is separate establishment from KHS, the Appellant society. Thus, the above submissions made by the Appellant proved to be adverse for their own cause, as the same is corroborating the findings made by us, and hence, is not tenable.
34. It is inter alia further submitted by the Appellant that all the technical-nontechnical staff working for the implementation of the project titled as "MGIMS" are the employees of Kasturba Health Society only where they will sue or be sued through the Kasturba health Society, a legal entity. MGIMS is not an independent organisation 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, have been owned and provided by KHS right from inception of the MGIMS. In other word words MGIMS does not have



an independent existence than 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.

35. Having regard to the above submission, it is reiterated that the Hon'ble High Court of Bombay, Nagpur Bench in the case of Ajay Gambhir (Supra) has already held that MGIMS is a public authority and/or is instrumentality of state owing to its function of providing medical education, therefore, the claim of the Appellant that MGIMS does not have an independent existence is clearly contrary to the Hon'ble High Court's observation, and hence not tenable. Merely because the management of the institute, which include the recruitment, appointment, supervision, salary of the staffs or employees working for MGIMS along with the other administration works, are being done by the Appellant, i.e., M/s. Kasturba Health Society, it does not lead us to conclude that MGIMS, the medical institute affiliated with the health university of Maharashtra and regulated and controlled by the Medical Council of India in so far as all its academic syllabus, curricula, the quality and standard of teaching and training methodology and other parameters required to exist and continue as medical institute/college is concerned, has no independent existence, as the management of any entity has nothing to do with its existence and its role as suppliers in the GST law. For example, though any subsidiary company is controlled and managed by its parent/holding company, it does not preclude it from being the separate entity/establishment from the parent/holding company, as the subsidiary companies may undertake different and independent functions or role than those of the parent/holding company, thereby rendering the same as distinct persons in terms of the provisions of section 25 of the CGST Act, 2017 . Same is the case with various branches of any company, which will be treated as distinct persons in terms of the GST law. Therefore, the above submissions made by the Appellant is not tenable.

36. The Appellant have referred to 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 March, 2015 in Civil Appeal No.5167 OF 2008 and Aditanar Educational Institution Vs. Additional Commissioner of Income Tax, II 9971 224 ITR 310 (SC), wherein the Hon'ble Apex Court held that Educational institutions, which are registered as a society, would



continue to retain their character as such. Relying upon the above cited judgment, the Appellant contended that the distinction sought to be made between the society and the educational institution run by it, does not, therefore, merit acceptance. They further, cited Karnataka High Court in CIT Central v/s Children Education Society 358 ITR 373.

37. As regards the above cited judgments, it is observed that the ratios of these judgments are clearly not applicable to the facts and circumstances of the present case, as the facts and circumstances of the cases cited by the Appellant were entirely different from the facts and circumstances of the case at hand. The above cited cases dealt with the determination of as to whether the charitable educational society, running an educational institution with the sole objective to provide the education without any commercial motives involved therein, if earns some profit, which are incidental to its main objective of providing education without any commercial intent, will be eligible for exemption from Income tax under the provisions of the Income Tax Act, 1961. In the above cited cases, the charitable societies viz.- Queen's Educational Society and Aditanar Educational Institution, which were the parties in the respective cases were the educational institutions themselves, which were engaged in providing the education. However, in the present case, the main issue is to determine as to whether the Appellant society and the medical college, i.e., MGIMS are separate and distinct entities or otherwise. Therefore, the principles laid down by the Apex Court in the above cited case laws are clearly not applicable in the case at hand, and the same are clearly distinguishable.
38. Vide para 18.7 above, the Appellant have relied upon the various documentary evidences, viz.- grant by the Central and State Govt. in the name of KHS for running the medical institute, e.g., MGIMS; Pension Fund registration, which are in the name of KHS for the employees working at MGIMS; Grant of PAN is in the name of KHS through which all the financial transaction relating to MGIMS are reported to Central Govt.; registration 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; for the purpose of regulating the transaction relating to MGIMS in foreign currency the registration granted under FCRA in the name of KHS alone and the transaction of MGIMS are not required to



report separately, the ownership and title of the land on which MGIMS is functioning also in the name of KHS.

39. It is opined that the above documentary evidences relied upon by the Appellant do not detract MGIMS from the fact that it is MGIMS, which is affiliated with the State Universities and monitored, controlled and regulated by the Medical Council of India. The role of the Appellant society is merely as the caretaker of the said medical institute, which is responsible for its management and administration as per the agreements entered by the Appellant Society with the Central Governments and State Government of Maharashtra. Thus, the core function of providing the medical institution is carried out by MGIMS, and not by the Appellant Society. This adequately proves its separate and independent existence as distinct entity from the Appellant Society.
40. We have also considered the other grounds put forth by the Appellant in their defense. However, the same do not lend any support to the Appellant's contention, hence we would not like to belabour on those grounds.
41. In view of the above discussions and findings, we pass the following order:

Order

Now, when it has been established that the medical institute, MGIMS, which is engaged in providing medical education, is separate and distinct entity from the Appellant Society so far as the applicability of the GST law is concerned, the questions asked by the Appellant are answered in-seriatim as under:

- (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.

Ans: - Since, the Appellant Society, as established herein above, does not provide the said Medical education, the question raised above is not proper and correct, and hence not answered.



- (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.

Ans: - The above question is not answered due to the reasons mentioned in the question (i) above.

- (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.

Ans: - The above question is not maintainable in terms of the Clause (a) of section 95 of the CGST Act, 2017, as the transaction with respect to which the Appellant has asked the question, is not pertaining to the Appellant but same is related to the medical institute, i.e., MGIMS.

- (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."



Ans: - The above question is not maintainable in terms of the Clause (a) of section 95 of the CGST Act, 2017, as the transaction with respect to which the Appellant has asked the question, is not pertaining to the Appellant.

(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."

Ans: - The above question is not maintainable in terms of the Clause (a) of section 95 of the CGST Act, 2017, as the transaction with respect to which the Appellant has asked the question, is not pertaining to the Appellant.

(iii)(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."

Ans: - The above question is not maintainable in terms of the Clause (a) of section 95 of the CGST Act, 2017, as the transaction with respect to which the Appellant has asked the question, is not pertaining to the Appellant.


(RAJIV JALOTA)
MEMBER




(SUNGITA SHARMA)
MEMBER

Copy to- 1. The Appellant

2. The AAR, Maharashtra

3. The Pr. Chief Commissioner, CGST and C.Ex., Mumbai

4. The Commissioner of State Tax, Maharashtra

5. The Jurisdictional Officer

6. The Web Manager, WWW.GSTCOUNCIL.GOV.IN

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