Learning from the Legacy:

Tax treatment of Charitable Activities under GST

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Abstract

The Goods and Services Tax regime has brought momentous changes in constitutional and taxation jurisprudence in India. The very premise of a good and simple tax, which replaces the extant indirect tax laws with a unified system, casts an onerous burden on the legislature to comprehensively address the complexities and controversies enduring under the said legacy laws. One such area that had witnessed continued litigation was the tax treatment of charitable activities. In an attempt to appreciate the position of this debate under the GST regime, this article first traces the history of the evolution of law and arrives at two primary issues that shaped the debate. First, whether charitable activities, due to their very nature, fall within the scope of a 'business', and second, whether the charitable institutions, due to their objective, fall within the scope of a 'dealer' or other taxable person, as defined under respective legislations. It is observed that judicial interpretations in this regard have been consistently sought to be legislatively overruled, resulting in newer facets of the debate coming into play. Thereafter, upon the application of the prevailing judicial interpretations on the definitions of 'business' and 'supplier' under the GST legislation, it was observed that the legislature has attributed the widest meanings to both so much so that any dealing in goods or services is a business, irrespective of the subjective-intention behind it, and any person undertaking such an activity is a supplier, irrespective of the primary or ancillary nature of the activity. It is therefore concluded that the text of the law and the relevant legislative intent does not afford any favourable or differential treatment to activities of charitable institutions inasmuch its taxability is concerned. And that is the policy of the law.

1. Introduction

The introduction of the Goods and Services Tax regime in 2017 was a watershed moment under the constitutional and the indirect taxation law of India. On the constitutional front, the Constitution (One Hundred and First Amendment) Act, 2016 brought about a paradigm shift in the jurisprudence of fiscal federalism in India[2], as it conferred unprecedented powers of taxation on the Centre and the States, who could now levy the tax simultaneously. On the taxation front, the Goods and Services Tax ("GST") regime not only subsumed multiple taxes into one goods and services tax, it also subsumed the concepts and jurisprudence developed

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[2] *Union of India v Mohit Minerals,* (2022) 10 SCC 700.

thereunder. Intuitively, this brings with itself the debates and issues prevailing under the past laws (or legacy laws) as well.

One such issue that was highly contested in the erstwhile sales tax and value-added tax ("VAT") laws was regarding the tax treatment of the activities of charitable institutions. This issue is a long-drawn saga involving the institutions getting favourable decisions from the judiciary and the legislatures amending the laws to overcome the same; again prompting the institutions to come up with further creative arguments, and so on. However, simply put, the debate revolved around two primary issues – *first*, whether the activities of charitable institutions fell within the definition of 'business', and *second*, whether such institutions were liable to get registered as a 'dealer'. Similar issues have been raised regarding the definitions of 'business' and 'supplier' under the GST regime as well, without there being much clarity.

Presently, the activities of charitable institutions in nature of services stand exempted vide Entry No. 1 of Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017. Notably, the exemption is only extended to those institutions that are registered as trusts under section 12AA of the Income-Tax Act, 1961, rendering only those 'charitable activities' as defined vide para 2(r) of the rate notification. The exemption given to the supply of services under the said notification is by way of imposition of nil rate of supply. It follows that the services are nonetheless considered taxable under the GST laws. However, no such exemption is extended to the supply of goods by any charitable institutions. Be that as it may, the scope of the present article is more fundamental. This article attempts to analyse whether the activities of charitable institutions fall within the ambit of 'business' and whether such charitable institutions can be considered as 'suppliers' under the Central Goods and Services Act, 2017 ("the CGST Act, 2017"). These issues go to the root of the matter as they seek to examine the very taxability i.e. levy of tax on charitable institutions and their activities.

This article addresses these issues by first tracing the evolution of the debate by analysing the relevant legislative and judicial developments in a two-fold manner under Part 2. The first section of Part 2 undertakes a review of developments under sales tax and VAT legislations of various states whereas the second section of Part 2 undertakes a review of the position under the central service tax law. Simultaneously, an attempt is made to highlight the treatment of the said judicially evolved law by the GST laws as well. Thereafter, the position under the GST regime is examined in a two-fold manner under Part 3. The first section of Part 3 engages with the interpretation of the definition of 'business' whereas the second section of Part 3 engages

with the interpretation of the definition of 'supplier'. A conclusive interpretation is finally articulated under Part 4.

2. Developments under the Legacy Laws

Prior to the introduction of the GST regime, the indirect taxes were levied by the Centre and the states in a mutually exclusive manner. While the Centre levied *inter alia* excise duties, customs duties, and service tax; the states levied *inter alia* sales tax and value-added tax. The evolution of the present debate under the respective laws is discussed in this Part.

2.1. Position under Sales Tax and VAT laws

The levies of tax under sales tax and VAT laws were primarily on sale or purchase of goods by a taxable person. A taxable person under these laws was a 'dealer', generally defined as a person who effectuates the sale or supply of goods in in carrying on or course of his business. The origins of the debate can be located in the interpretation of a 'business' although the focus of the debate gradually shifted to the interpretation of a 'dealer' with the amendments and developments in law. The following discussion traces the major milestones of this debate in order to understand the interpretative history that influences the legislative mind in drafting the definitions today.

THE 'PROFIT MOTIVE' REQUIREMENT

Initially, in the first couple of decades after independence, the definitions of a 'business' under the sales tax and VAT legislations were generally worded as inclusive of trade, commerce, manufacture, adventure, concern, etc. They were silent on the relevance of 'pecuniary benefit' motive or purpose of business.

In interpreting such definitions, the courts considered 'profit motive' as an implied[3] yet essential characteristic of a business. It was consistently held that in the absence of any profit motive, mere activities of buying or selling did not qualify as a business.[4] The Madras High Court in ***Gannon Dunkerley and Co. v. State of Madras***[5] held that 'business' must be

[3] *State of Tamil Nadu and Ors. v Board of Trustee of the Ports of Madras*, (1999) 4 SCC 630, ¶19.
[4] *Trustees of the Port of Madras v State of Madras,* (1960) 11 STC 224 (Mad).
[5] [1954] 5 STC 216.

contextually understood in a 'commercial sense' involving the intention of gaining profit. An offshoot of this was a requirement of 'commercial content'. The Madras High Court in ***State of Madras v. Trustees of Port of Madras***[6] ***(1973)*** held that transactions of the concerned Port Trust in selling unclaimed and unserviceable goods were not in nature of a 'commercial venture', rather, in the course of the exercise of its statutory duties.

In the wake of such interpretation, the respective legislations were amended to statutorily exclude consideration of 'profit motive' as a relevant factor.[7] This legislative intention has continued under the GST regime too as clause (a) of section 2(17) of the CGST Act, 2017 considers an activity as a business *"whether or not it is for a pecuniary benefit"*.

THE 'PRIMARY OR MAIN ACTIVITY' REQUIREMENT

Another line of interpretation gaining traction under the early definitions of business was that it only encompassed the 'primary' activity of the taxable person and not any and every offshoot adventure undertaken. The Courts maintained a distinction between primary activity of business and other residuary activities of the taxable person under the interpretation that 'business', as used in taxing statutes, referred to an occupation requiring investment of time, attention, and labour.[8] The Supreme Court in ***State of Gujarat v. Raipur Manufacturing Co. Ltd.***[9] held that selling of 'unserviceable or discarded' goods was not integrally connected with the main business of the concerned textile mill and hence not exigible to sales tax.

Similarly, the Supreme Court in ***Hindustan Steels Ltd. v. State of Orissa***[10] held that selling of bricks to contractors was not a part of the main activity of steel production and thus not exigible to sales tax. To ascertain the 'main business activity', the intention of the assessee was also enquired into. The Supreme Court in ***State of Gujarat v. Vivekanand Mills***[11] held that even though the concerned mills were engaged in commerce of cotton, the sale of local cotton was not liable to tax since it was not effected with an intention to carry on a business of selling cotton, rather to avoid capital blockage in view of early delivery of Californian cotton shipment. As a logical corollary, activities of sport or pleasure were also excluded.[12]

[6] (1974) 34 STC 135.
[7] *Hyderabad Asbestos Cement Products Ltd. v State of Andhra Pradesh*, MANU/AP/0188/1970.
[8] *State of Andhra Pradesh v H. Abdul Bakshi & Bros.,* [1964] 7 SCR 664.
[9] [1967] 1 SCR 618; see also *State of Gujarat v Arvind Mills Ltd.* MANU/GJ/0069/1966.; *State of Gujarat v Ambica Mills Ltd.,* MANU/GJ/0070/1966.
[10] [1972] 83 ITR 26 (SC).
[11] (1967) 19 STC 103 SC.
[12] *State of Andhra Pradesh v H. Abdul Bakshi & Bros.,* [1964] 7 SCR 664.

This prompted another round of amendments in the late 1960s and early 1970s wherein the legislatures provided for inclusion of activities 'connected with' or 'incidental to' or 'ancillary to' trade, commerce, etc. in the definition of business. Notably, the intent has since been constant and also incorporated under the CGST Act, 2017 vide clause (b) of section 2(17) that includes *"any activity or transaction in connection with or incidental or ancillary to sub-clause (a)"* under the definition of business.

INTERPRETATION OF 'CONNECTED WITH, INCIDENTAL OR ANCILLARY TO' CLAUSES

The legislative response of inserting the said clauses again fell for judicial consideration on numerous occasions. The Supreme Court in ***Royal Talkies, Hyderabad v. Employees State Insurance Corporation***[13] held that the phrase 'incidental to' did not require the activity to be integral to the main business, rather, so long as it is not extraneous or contrary to the main object, it was included within the definition of 'business'. The Supreme Court in ***State of Tamil Nadu v. Binny Ltd. Madras***[14] further held that the phrase did not necessitate a direct connection, rather, so long as there is no irrelevance of the activity to the object of the person, all such activities would stand covered.

This interpretation of the judiciary favourable to the legislatures, however, did not preclude further interpretative creativity in nuanced situations. The question that acquired prominence was whether the incidental or ancillary activities, being in the nature of business themselves, were includible in the definition of business if the main activity was 'non-business' in the first place. The Supreme Court in ***State of Tamil Nadu v. Board of Trustees of the Port of Madras***[15] ***(1999)*** answered in the negative by observing that the "infinitesimal" dependent activities would also not amount to 'business'. However, the department may rebut this presumption by establishing that the person carried on such other activities with an "independent intention to conduct business in those connected, incidental, or ancillary activities". In essence, the intention, coupled with the quantum of such other activities, could effectively make it another main activity only. In doing so, the volume, frequency, continuity, and regularity of such dealings of purchase or sale may be considered.[16]

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[13] (1978) IILLJ 390 SC.
[14] AIR 1980 SC 2038.
[15] (1999) 4 SCC 630.
[16] *Board of Revenue and Ors. v A.M. Ansari and Ors.,* [1976] 3 SCR 661.

On a similar note, the Andhra Pradesh High Court in ***Base Repair Organisation (Naval Dockyard), Vishakhapatnam v. State of Andhra Pradesh***[17] observed that it is not necessarily true that all the incidental or ancillary activities cease to be business so long as the main activity is not a business. A balancing act is required by allowing the departmental authorities to rebut the presumption. This interpretation still holds field as no apparent amendments had been effected under the legacy laws to overcome the aforementioned decisions. Interestingly, the CGST Act, 2017 too does not seek to materially alter this interpretation since it balances the interests of the revenue as well as the taxable person. But there is a nuance. Clause (c) of section 2(17) of the CGST Act, 2017 liberalises the definition of the primary business activity by providing that it includes *"any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction"*.

This overcomes the effect of the Supreme Court decision of ***Board of Revenue v. A.M. Ansari***[18], which considered the said factors to be relevant. Effectively, the said clause relaxes the burden of the department in rebutting the presumption by increasing the scope of what is considered an independent primary activity itself.

THE REQUIREMENT OF 'CARRYING ON' THE BUSINESS

Returning to the interpretative saga, once the arguments pertaining to the definition of business had seemingly exhausted due to multiple rounds of legislative overruling, recourse was sought to a frequently occurring phrase – "carrying on business" under the definition of a dealer. By and large, a 'dealer' was defined as a person 'carrying on the business' of selling or purchasing the goods or any other taxable event. This was interpreted to mean something more than the dealer merely selling or purchasing the goods.[19]

The Allahabad High Court in ***Swadeshi Cotton Mills Co. Ltd. v. Sales Tax Officer***[20] observed that the primary object and mission of educational institutes was imparting education, and it cannot be said to be 'carrying on' the business of selling food merely because it was also running a canteen facility. Similarly, educational institutes cannot also be said to be 'carrying

[17] MANU/AP/0118/1982.
[18] [1976] 3 SCR 661.
[19] See generally *Director of Supplies and Disposals, Calcutta v Member, Board of Revenue*, *West Bengal, Calcutta*, [1967] 3 SCR 778; *Government Medical Store Depot, Gauhati v Superintendent of Taxes, Guahati and Ors.,* [1985] 4 SCC 239; *Government Medical Store Depot, Karnal v State of Haryana and Ors.,* [1986] 3 SCR 450; *State of Punjab v Assessing Authority, Chandigarh,* AIR 1991 SC 1059.
[20] AIR 1956 All 86.

on' the business of providing lodging and boarding facilities to persons visiting their campus.[21] The Bombay High Court in ***VKSV Sangh Ltd. v. State of Maharashtra***[22] held that merely because a cooperative society, having the object of transporting its members' fish to and from the respective fishing centres and the market, collected prices for ice used in preservation of fish during transportation from its members, it cannot be said that the society was 'carrying on' the business of selling ice.

A landmark ruling that is oft-cited in this regard is the Supreme Court decision of ***Commissioner of Sales Tax v. Sai Publication Fund***[23]. The Division Bench therein interpreted the definition of 'business' under the Bombay Sales Tax Act, 1959, which included the following activities, regardless of its profit motive – (i) "any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture" and (ii) "any transaction in connection with, or incidental or ancillary to, the commencement or closure of such trade, commerce," etc. The Appellant therein contended that the amended definition, doing away with the profit motive requirement, took within its fold the Respondent's activities by the mere fact that the Respondent had engaged in the selling of books and publications. *Per contra*, the Respondent contended that the definition of 'dealer' under the concerned statute required the person to 'carry on the businesses'. Any person could not have been considered a 'dealer' in any goods it bought or sold unless it 'carried on' the business of buying or selling those goods.

The Division Bench employed the 'dominant activity' test to hold that the aim of the Respondent was to engage in a charitable activity, which is not covered by the definition of 'business'. The activity of selling books and publications was not the primary intention of the trust, but only a 'means' to achieve the 'end'. Such ancillary activities are not covered by the second part of the definition of business as well since the dominant activity was not covered by the first part. To elaborate, there must exist a 'business' in the first place for other ancillary activities to be included as well. Therefore, in the concerned facts, where the trust was created solely for charitable purposes of spreading religious teachings, which was not a 'business' in the first place, the ancillary activities too cannot be considered 'business'. The Division Bench drew further support from the charging provision, which levied the sales tax on sales effected by a dealer only, and not any and every person.

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[21] *Indian Institute of Technology, Kanpur v State of Uttar Pradesh*, (1976) 38 STC 428 (All).
[22] [1968] 22 STC 116.
[23] AIR 2002 SC 1582.

Affirming the decision of the *Board of Trustees of the Port of Madras (1999)*, it was held that 'carrying on' business required consideration of the volume, frequency, continuity, etc. of such dealings. As observed by the Bombay High Court in the ***State of Bombay v. Ahmedabad Education Society***[24], the 'carrying on' of a business was to be ascertained with reference to the object and the intention of the person. This follows from a purposive interpretation of the said phrase and the legislature's intention in using the phrase is to be given operation. Had it been a case that any activity of buying or selling were to be charged to sales tax regardless of the object of the person, the legislature would not have used the phrase 'carrying on' in the first place. Therefore, the Division Bench held that neither the charitable activities of the Respondent were covered by the definition of 'business' nor the Respondent was a 'dealer' carrying on the business of selling books and publications.

At this juncture, the decision in ***Assistant Commissioner, Ernakulam v. Hindustan Urban Infrastructure Ltd.***[25] assumes greater significance; wherein the definition of a 'dealer' under the Kerala General Sales Tax Act, 1963 came up for consideration of the Supreme Court. Under the said statute, a 'dealer' was defined with reference to 'carrying on' the business but also included cases where any person, "whether in the course of business or not", engages in sale or transfer of goods. It was observed that the definition gave "exceptionally" wide import to the meaning of 'dealer'. The legislative intention of not restricting the meaning to common parlance understanding was evident by the 'whether in the course of business or not' phraseology.

Recently, a three-judge bench of the Supreme Court in ***Cochin Port Trust v. State of Kerala***[26], revisiting the said definition, when faced with a question as to whether a trust's ancillary activity of selling scrap items constituted its 'business' activity. The Appellant sought to rely on multiple authorities including the *Madras Port Trust (1999)* case *(supra)* and the *Sai Publication* case. Interestingly however, the Supreme Court distinguished the relied-upon authorities by observing that the definition under the concerned Kerala state legislation was not *pari materia* with the definitions under the respective state legislations of Tamil Nadu and Bombay involved in *Madras Port Trust (1999) (supra)* and *Sai Publication (supra)*.

The Kerala state legislation did not incorporate 'carrying on' of business as an essential ingredient in contradistinction to the latter two. Whereas under the latter two legislations, a

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[24] AIR 1956 Bom 673.
[25] (2015) 3 SCC 735.
[26] [2015] 4 SCR 343.

person would not have been considered a dealer sans him ‘carrying on’ the business of buying or selling the relevant goods, the Kerala state legislation specifically sought to exclude such requirement. This, effectively, did away with the ‘dominant activity’ and the dependant-ancillary activity tests. As such, the ancillary activities of the Cochin Port Trust were held to be its ‘business’ without enquiring as to whether the dominant activity was ‘business’ in the first place.

It is relevant to note a ‘supplier’ is a GST counterpart of a ‘dealer’, that is, the relevant taxable person. The definition of a supplier under section 2(107) of the CGST Act, 2017 does not use the phrase ‘carrying on the business’ and this may have far-reaching consequences, which have been detailed in the second section of Part 3 of this article.

Decisions Relevant to the Activities of Charitable Institutions

Before parting with this Part of the article, some of the judgments specific to the activities of charitable institutions may be perused. It is notable that a majority of the judgments so relevant pertain to the pre-amendments period when profit-motive was considered a determinative factor. However, some other reasoning given in the judgments, distanced from the ‘profit-motive’ one, may nonetheless prove useful.

The Gujarat High Court in ***State of Gujarat v. Shri Suraj Panjarapole***[27] considered whether a public charitable institution, founded to preserve the lives of stray animals, was a ‘dealer’ under the Bombay Sales Tax Act, 1953 insofar as it also carried on the activities selling animal carcasses, milk from cattle, and other like products. The court referred to various early authorities that required ‘profit-motive’ for a business and held that the said activities of selling animal products were ancillary to the main activity of charity. The ancillary activities did not fundamentally alter the essential charitable character of the institution and thus it was not liable to get registered as a ‘dealer’.

The Madras High Court in ***Commissioner of Commercial Taxes v. Evangelical Literature Service, Madras***[28] decided whether a society, engaged in trading of Christian religious literature, was liable to sales tax if it was utilising the profits earned for propagation and dissemination of Christian literature. It was held that it was neither the legislative intent nor it was practicable to require the tax department to investigate the actual application of the profits.

[27] (1969) 23 STC 57.
[28] (1974) 33 STC 325.

That is to say, the "destination of the profits" was not considered a relevant factor in determining tax liability.[29] Therefore, the society was held to be a dealer.

The Bombay High Court in ***Commissioner of Sales Tax v. Cutchi Dasha Oswal Mahajan Graha Udyog Committee***[30] dealt with the question as to whether a charitable trust, started with the primary objective of ameliorating the poor living conditions of the destitute women of the Cutchi Dasha Oswal caste, was a 'dealer' under the Bombay Sales Tax Act, 1959 insofar as it was selling the eatables prepared by the women for generating their maintenance only. The Appellant raised an interesting argument that the activity of selling eatables in the market, especially at market price, is purely a commercial or 'business' activity. The subsequent application or utilisation of the profits earned therefrom for charitable purposes was not relevant for the determination of 'carrying on' the business.

The Court however construed the activities of the trust differently in distinguishing the *Evangelical Literature Service* case *(supra)*. It was observed that this was not merely a case of subsequent utilisation of profits, rather, the very activity of employing the destitute women, which ultimately yielded profits that were also utilised for those women only, was in furtherance of the primarily charitable objectives of the trust. In interpreting the term 'business', the court found it proper to refer to the ***State of Andhra Pradesh v. Abdul Bakshi & Bros.***[31] and note that business necessarily involved a continuous course of 'profit-motivated' dealings. As such, it was concluded that the Respondent was not a dealer as its activities were not profit-motivated.

Therefore, a key takeaway is that the dealer's subjective intent in utilising the profits may not be relevant in its tax treatment unless the complete activity is so structured. Liability to tax must be objectively determined. The bearing of this objective test on the GST regime is elaborated in the first section of Part 3 of this article.

2.2. Position under the Service Tax law

The erstwhile regime of service tax, as governed by Chapter V of the Finance Act, 1994, amended time from to time, adopted a completely different approach to levying tax. The

[29] *Commissioners of Inland Revenue v Korean Syndicate Ltd.,* [1921] 3 K.B. 253; see also *Religious Tract and Book Society of Scotland v Forbes,* (1896) 3 Tax Cas. 415; see generally *Indian Coffee Board v. State of Madras, (1954) 5 STC 292.*

[30] MANU/MH/0092/1975.

[31] [1964] 7 SCR 664.

charging provision, section 66B of the Finance Act, 1994, levied service tax on the event of 'provision' of services by "one person" to "another". As such, the taxable person was any such "person" and no specific legal fiction of a 'dealer' was created. As a logical corollary, there were no riders of those of 'carrying on the business' imposed on the taxable person.

Additionally, the incidence of tax on any such person was also activity-specific only, ruling out the scope for any enquiry into main business activity or incidental or ancillary activity or intention thereof. In fact, after the sweeping changes being made vide the Finance Act, 2012, the service tax regime moved from a positive list regime to a negative list regime. Whereas, prior to the 2012 amendment, sections 66 and 66A, being the charging provisions, created tax liability only in cases where specific services enumerated under sub-clauses (a) to (zzzzw) of clause (105) of section 65 were rendered, and none others; post 2012 amendment, section 66B, the new charging provision, created tax liability in "all" cases where any service was rendered except those specified under clauses (a) to (q) under section 66D (known as the negative list).

Therefore, the treatment of activities of charitable institutions under the Finance Act, 1994 did not witness much debate. Charitable institutions fell squarely under the interpretation of a "person" under clause (37) of section 65B of the Finance Act, 1994, which defined it according to the classical inclusive list as found across taxing statutes. The charitable institution specific litigation that did occur was with regards to its specific activities and whether the same fell under the negative list of section 66D or under the mega exemption granted vide Notification No. 25/2012-ST dated 20.06.2012.[32]

To conclude, the activities of charitable institutions were taxable unless provided otherwise. However, they were given benefits under various exemptions, the most notable being Entry 4 of the Mega Exemption Notification that exempted all services provided by institutions registered under section 12AA of the Income Tax Act, 1961 so long as they were in nature of "charitable activities", as widely defined by para 2(k) thereunder.

3. Position in the GST Regime

The analysis in this part adopts a two-tiered analysis viz. interpretation of 'business' (in the first section) and interpretation of 'supplier' (in the second section). This ensures that the

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[32] See generally *Principal Commissioner of Service Tax v Shree Chanakya Education Society,* (2018) 362 ELT 741; *Unitech Southcity Educational Charitable Trust v CST (Adj.), New Delhi,* (2018) 49 GSTR 35.

essence of the debate on the subject matter, as addressed judicially as well as legislatively under the legacy laws, is adequately considered.

3.1. Interpretation of section 2(17): Business

The judicial discourse qua activities of charitable institutions under legacy laws have little to offer as regards the interpretation of the definition of 'business' that would be relevant to the present issue. Two reasons for this inadequacy can be identified. *First*, the decisions that engage with the definition of business pertain to the pre-amendments era when 'profit-motive' was not statutorily excluded. Thus, business was widely attributed its colloquial meaning as a venture with profit-motive, whether or not the profit actually accrues. However, in view of express legislative exclusion of profit-motive, those judgments lend no additional assistance. *Second*, the trend of litigation after the said amendments shifted the enquiry's focus from the interpretation of business to the interpretation of a 'dealer'. The question of taxability rather hinged on the rider of 'carrying on the business' as it was perhaps found to be a more convenient approach.

One of the few relevant judgments that deal with the interpretation of 'business' independent to the interpretation of 'dealer' after the 'profit motive' requirement was excluded by amendments is *Sai Publication Fund*[33] *(supra)*. However, this judgment suffers from non-reliability on a different account. The Court's enquiry is surprising insofar as the premise itself was considered a conclusion without any intervening discussion or reasoning. At para 10 of the judgment, the Court first observed that the primary activity of the trust was to spread religious messages. This was the factual premise. In the very next sentence, the Court went on to hold that "[t]his main activity does not amount to business". This was the conclusion. Such an approach falls foul of any recognised method of logical reasoning whereby a premise is supported with relevant arguments to finally arrive at a conclusion. In the absence of any such logical exercise, this finding of the Court invariably suffers as being *sub-silentio*.

In such a state of affairs, one is compelled to look towards other laws for jurisprudence on a similar, if not identical, subject matter. One of the most prominent debates that may be looked into is the one that plagued the labour laws in the second half of the twentieth century. A seven-judge bench of the Supreme Court convened in ***Bangalore Water Supply and Sewerage Board***

[33] AIR 2002 SC 1582.

v. A. Rajappa and Ors.[34] to address a long-drawn debate, marred by conflicting judicial pronouncements, relating to the definition of an 'industry' under the Industrial Disputes Act, 1947. An industry was defined under section 2(j) of the said Act as such:

> *"industry means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen"*

Presumably, an authoritative interpretation of these definitions ought to lend considerable assistance in the interpretation of the definition of a 'business' under section 2(17) of the CGST Act, 2017 for two reasons, *inter alia – first*, there is a commonality in certain words employed in both the definitions viz. business, trade, and manufacture, and *second*, there is a similarity in the structure of the definitions inasmuch both have apparently overlapping words put together. However, at this juncture itself, it is relevant to highlight four major caveats in seeking assistance from this judgment.

First, the definition of 'industry', being a part of a labour law having welfare objective, was interpreted liberally whereas the definition of 'business', being a part of tax law, ought to be interpreted strictly. *Second*, apart from the aforementioned commonality, there are many other dissimilar words as well, which invariably have a bearing on the interpretation of the definition, when read as a whole. *Third*, the definition of 'industry' puts special emphasis on the employer-workman relationship whereas the definition of 'business' is person-neutral and activity-specific. *Fourth*, the definition of 'industry' uses specific words, hinting at a possible application of *noscitur a sociis* whereas the definition of 'business' is appended by the words "any other similar activity", hinting at a possible application of *ejusdem generis*.

Even the leading judgment in *Bangalore Water Supply* flags such a word of caution by mentioning that "similar words in dissimilar statutes, contexts, [and] subject-matters" must not be confused.[35] The same words under different statutes are 'scarcely of much value' and may only persuade, not pressurise. In view of the same, special care is taken in drawing from the interpretation rendered in the *Bangalore Water Supply* case. Krishna Iyer, J., authoring the leading judgment on behalf of himself, Bhagwati and Desai, JJ. begins his enquiry by observing that continuity, organised nature, and purposeful pursuit (not any isolated adventure) is a common feature of *inter alia* trade, business, and manufacture. He then embarks on a specific

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[34] (1978) 2 SCC 213.
[35] ibid ¶28.

enquiry qua charitable institutions. The analysis is three-limbed – *first*, institutions run with profit-motive where the revenue is subsequently diverted towards charitable purposes is purely an ‘industry’ as the destination of profits is irrelevant; *second*, institutions run without profit-motive but involving supply of goods and services at concessional or no cost is also an ‘industry’ as recipients of goods and services, whether indigent or otherwise, is not the concern of the law and the fact that the institution undertakes functions of administration, purchase, sale, etc. are in nature of trade and commerce only; and *third*, an institution on a humane mission run by like-minded persons may not be an ‘industry’ where there is no ‘economic relationship’ between the employer and the workmen. Notably, the third category is not exempted merely because of its charitable impulse, as expressly clarified.

Y.V. Chandrachud, C.J. in his separate order, also proceeded to examine the case of charitable institutions. He noted that the subjective motive of the person conducting an activity as well as the charitable nature of the activity is irrelevant inasmuch the relevant test is objective ascertainment as to whether the systemic activity undertaken by the institution is “organised or arranged” in a manner similar to a trade or business. Pertinently, he notes that “the argument that he who does charity is not doing trade or business misses the point” for the true test requires subjectivity to yield to objectivity. He further offers insights on the ‘jural foundation’ of the proposition that seeks to exclude charitable activities from the scope of the definition. Such a proposition, he elucidates, is largely based on the assumption that the definition only covers enterprises undertaken for profit; but such an argument of ‘profit-motive’ has been nipped in the bud over the course of multiple judicial rejections.[36]

Having gone through the judgment, it is imperative to proceed with its bearing on the interpretation of section 2(17) of the CGST Act, 2017. Whereas the leading judgment considered the systematic or organised nature of the activity as a cardinal characteristic of business and trade, clause (a) of section 2(17) of the CGST Act, 2017 specifically treats any ‘adventure’ or ‘wager’ as a business. This runs in the fact of the majority judgment, which considered such sporadic adventures as an exception to activities of business or trade. However, what the GST definition does not exclude is the objective test, as against a subjective one, contemplated by the leading judgment as well as the concurring opinion. Therefore, it would not be far-fetched to assert that the legislature has not intended to overcome the effect of the judgment inasmuch it treated charitable intention to be irrelevant for the purpose of constituting

[36] ibid ¶180.

an activity in the nature of business or trade. However, having excluded the subjective intent from the examination, it remains to be seen what objective standard the GST regime contemplates when it also excludes the objective standard of systematic activity.

Before concluding the discussion, it is emphasised that as a measure of ample caution, only those observations from the *Bangalore Water Supply* case *(supra)* have been sought to be adopted that strictly pertain to the meaning of the words 'business', 'trade', and 'commerce' and their interplay with activities of charitable institutions. Observations that exhibit a certain degree of dependence on labour laws' peculiar and benignant disposition towards the interests of the working class have not been adopted, so to say, for the tax laws hold no such interpretative proclivity.

A CURIOUS CASE OF EJUSDEM GENERIS RULE

This brings us to the next issue of deciphering the 'objective' standard under section 2(17) of the CGST Act, 2017, if any. As indicated hereinabove, the structure of the definition insofar as it contains certain specific words ('trade, commerce, manufacture …') followed by a general phrase 'or any other similar activity' tempts an interpreter to read it as *ejusdem generis*. This rule of construction provides that where some specific words constituting a distinct class or genus are followed by general words, the scope of the latter is controlled by the former. In other words, the general words must be restrictively construed to include only those [unwritten] things that belong to the identified class or genus.[37] This rule is not an 'inviolable rule of law', but only an interpretative device invoked in the absence of an indication of contrary legislative intent[38] to ensure that every word used by the Parliament is purposefully interpreted.[39]

Therefore, in cases where the legislative intent requires adoption of a wider meaning, the restrictive rule of *ejusdem generis* must give way to the broader rule of purposive construction.[40] As such, before delving into the merits of applying the rule to section 2(17) of the CGST Act, 2017, the legislative intent in this regard must be addressed. The usage of "similar" under clause (a) of section 2(17) clearly indicates that the general entry of 'other

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[37] GP Singh, Principles of Statutory Interpretation (also Including general Clauses Act, 1897 With Notes) (14th edn, Lexis Nexis 2016) 442.
[38] *Kavalappara Kottarathil Kochuni v State of Madras,* AIR 1960 SC 1080.
[39] *Tillmans & Co v SS Knutsford Ltd,* (1908) 2 KB 385.
[40] See *Re, C (a minor),* (1996) 4 All ER 871, *Maharashtra University of Health Science v Satchikitsa Prasarak Mandal*, (2010) 3 SCC 786.

activity' should bear similarities with the preceding entries; thus, ruling out any objections as to contrary legislative intent.

Proceeding to the application of the rule, the identification of a broad class or genus in the first place is equally essential.[41] Unrelated words, which are not related by any common characteristic, cannot constitute a genus[42] and straightaway rule out the application of this rule. Whether the words constitute a genus is determined on a fact-to-fact basis as it requires ascertainment of common characteristics pervading each and every preceding word. Hence, it must now be seen if the words 'trade', 'commerce', 'manufacture', 'profession', 'vocation', 'adventure', and 'wager' constitute a genus. At first blush, it may be tempting to conclude that this constitutes a distinct genus basis two assertions – *first*, that the words ostensibly require a systematic arrangement as held in *Bangalore Water Supply (supra)*, and *second*, that the words refer to a taxable person's regular course of dealings in goods and services.

However, a closer examination reveals that such conclusion is fraught with two pitfalls – *first*, the words 'adventure' and 'wager' refer to isolated activities undertaken without rhyme or reason, much less a systematic one, and *second*, clause (c) of section 2(17) clearly precludes the characteristics of 'volume', 'frequency', 'continuity', and 'regularity' of the activity, thus operating as a contrary legislative intent to characteristic of 'regular course of dealings'. Therefore, the rule of *ejusdem generis* lends no assistance in interpreting the definition.

It must however be noted that the mere fact of inapplicability of *ejusdem generis* does not necessarily lead to a contrary conclusion that the wide meaning of the general word is unrestricted. The context and the policy of the statute may nonetheless demand a restricted construction;[43] for instance, where the general phrase "other" is cut down expressly by the words "of a like nature"[44] (as also provided similarly under section 2(17) of the CGST Act, 2017). The question that thus follows is whether any such contextual or policy restrictions befall the definition of 'business' under the CGST Act, 2017. This is where the title of this article finds full expression. The attempts at legislatively overcoming the effects of previous unfavourable judgments have led to a situation where no contextual or policy restrictions can even be read in the definition. Under section 2(17) of the CGST Act, 2017 – clause (a) waives the limitation of pecuniary benefit or profit motive; clause (b) waives the limitation of the

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[41] *State of Bombay v Ali Gulshan*, AIR 1955 SC 810.
[42] *Jiyajirao Cotton Mills Ltd v MP Electricity Board*, AIR 1989 SC 788.
[43] *R v Clarke*, (1985) 2 All ER 777.
[44] GP Singh, Principles of Statutory Interpretation (also Including general Clauses Act, 1897 With Notes) (14th edn, Lexis Nexis 2016) 447.

concerned activity being the taxable person's primary business; clause (c) waives multiple limitations of continuity, regularity, etc.

Thus, what is left is an open-ended definition that is restricted neither by *ejusdem generis* nor by the context or policy taking within its fold each and every conceivable activity. This enquiry began with the aim of finding an 'objective' standard contemplated by the GST regime. Revisiting the conclusion that was arrived at after analysing *Bangalore Water Supply (supra)* that the subjective-intention of the taxable person who runs a charitable institution or otherwise would be irrelevant, it is safe to further conclude that so long as the taxable person deals with any goods or services in any manner, all of such dealings will be considered a business under the GST regime.

Before parting with this conclusion, the sovereign's right to tax should however be contextually appreciated as well. It is a trite law that a State can levy taxes on any activity, called a taxable event, as long as a nexus, however weak, can be established. Fetters on a State's right to tax can only be imposed by its own policy. As such, if the legislature has expressed its desire to levy the GST on all supplies made in the course or furtherance of business vide section 7(1)(a) of the CGST Act, 2017, save as provided otherwise by law, no illegality can be found with the same. Attributing such a wide definition to business may be understood as a policy decision to broaden the taxable base and plug any intentional or unintentional tax avoidance.

3.2. Interpretation of section 2(105): Supplier

The second section of Part 3 turns to interpreting the definition of a 'supplier'. Before proceeding, the discussion must be contextualised. As noted previously, the drafting of the GST laws amply reflects that the legislature had thoroughly considered interpretations under the legacy laws. The requirement of identifying a taxable person is *sine qua non* to any tax legislation. The Supreme Court in the celebrated judgment of ***Govind Saran Ganga Saran v. Commissioner of Sales Tax***[45] held that the person on whom the levy is imposed and who is liable to pay the tax must be precisely identified; failure whereby due to uncertainty or vagueness being fatal to the validity of the law. As noted in Part 2, the taxable person under sales tax and VAT laws was a 'dealer' whereas under service tax law it was any person providing or rendering any 'service', save as provided otherwise by the negative list. Therefore,

[45] 1985 Supp SCC 447, ¶6.

it becomes imperative to assess which of these ways of defining a taxable person the GST laws have adopted.

The CBIC hinted in this regard vide its flyer titled 'GST on Charitable and Religious Trusts' dated 01.01.2018 by providing that treatment of the activities of charitable institutions under GST has been "borrowed and carried over" from the service tax regime. In other words, it can be understood from the flyer that the provisions of the Finance Act, 1994 may have been adopted *mutatis mutandis* under the GST to accommodate tax treatment of goods as well. However, the flyer only reflects the Board's interpretation, and it remains to be tested how far the erstwhile service tax treatment has a bearing on the GST treatment.

At the outset, the tax treatment of the activities of charitable institutions under the legacy laws may be summed up as such: whereas the sales tax and VAT laws involved an interplay of definitions of 'business' and 'dealer' whereby the intention and the purpose of the activity was a relevant enquiry, the service tax law envisaged a limited enquiry of negative list regardless of the 'purpose' of the business. The CGST Act, 2017 ostensibly adopts a scheme similar to the states' sales tax and VAT legislations by providing an interplay of 'business' and 'supplier'. Section 2(17) defines 'business' in an inclusive manner by providing certain instances of activities or transactions. The significance of individual clauses of the definition and the reasons they have been so included under the GST legislations has been elaborated in Part 2 of this article. Further, section 2(105) defines a 'supplier' in a restricted manner as a person making supplies of goods and services. Evidently, the requirement of 'carrying on' the business is not to be found.

The question that follows such observation is whether the non-inclusion of the 'carrying on' phraseology under section 2(105) of the CGST Act, 2017 is reflective of the intention of the Parliament to legislatively proscribe the enquiries into 'intention' and 'main object' of the supplier given that such enquiries only sprung by interpretation of the 'carrying on the business' wording under the legacy laws? It was precisely this phraseology that gave the scope for enquiries into the 'primary activity' and dependence of 'ancillary or incidental activities' on the business nature of the former. The answer to this question would be determinative for the taxability of charitable institution's activities.

The exercise of ascertaining the legislative intent is not an easy task for a multitude of reasons such as the inherent imperfections of a language in expressing one's thoughts, inadequate expertise in legislative drafting, and things left out for 'being too obvious to be stated' by the

drafters. It is to address these shortcomings that numerous rules of interpretation have been evolved by the courts. The upcoming portion of this Part attempts to cull out the legislative intent behind section 2(105) of the CGST Act, 2015 by applying the cardinal principles and rules of interpretation.

THE PLAIN MEANING RULE

It is trite law that the legislative intention must primarily be sought in the words employed by the legislature itself.[46] The rule of discerning the true meaning of a statute from the language used has been described as "the cardinal principle of construction"[47]. The rule posits that when the legislature employs clear and unambiguous words in a statute, the courts must presume that the legislator's will is being communicated in plain words and the same must be effectuated. **Tindal, CJ** in the celebrated ***Sussex Peerage*** case[48] observed that precise words of a statute *ipso facto* declare the intention of the law-makers. The courts then play a limited role in giving effects to such will of the legislature in a natural and ordinary sense. A five-judge bench of the Supreme Court in ***Bharat Aluminium Company v. Kaiser Aluminium Technical Services***[49] observed that in interpreting any provision, the court should first construe it by its plain language or terms and avoid reconstructing the provision to what it finds more suitable.

Section 2(105) of the CGST Act, 2017, in its plain terms, does not require a supplier to be 'carrying on' the business of supplying goods or services. Rather, it simply requires the supplier to supply. Thus, the factum of the supply being made in carrying on its 'primary or main' business or otherwise is of no consequence. Since the legislature has removed the requirement of 'carrying on' the business from the definition of the taxable person, which was fundamental to judicially evolved tests of intention and 'primary objectives', the decisions and interpretations rendered in the legacy laws, particularly VAT and sales tax, holding activities of charitable institutions outside the scope of levy of tax are totally distinguished.

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[46] *Kannailal Sur v Paramnidhi Sadhukhan,* 1958 SCR 360; Padmasundara Rao v. State of TN, (2002) 3 SCC 533.

[47] *Union of India v Elphinstone Spinning and Weaving Co Ltd.,* (2001) 4 SCC 139.

[48] (1844) 11 Cl & F 85.

[49] *Bharat Aluminium Co v Kaiser Aluminium Technical Services Inc,* (2012) 9 SCC 552.

Strict Interpretation of Tax Laws

The strict interpretation approach is a result of the application of the plain meaning rule to laws relating to fiscal and economic activities. A five-judge bench of the Supreme Court in ***R.K. Garg v. Union of India***[50], adopting the United States' position of ***Morey v. Doud***[51], observed that "there are good reasons for judicial self-restraint, if not judicial deference to legislative judgment" in interpreting taxation and other fiscal laws. The courts have always allowed a greater latitude of experimentation in economic legislations considering its highly sensitive and complex nature.[52] In the context of GST, the Supreme Court in ***Union of India v. VKC Footsteps***[53] similarly held that it is not the prerogative or function of the courts to dictate the fiscal policy through its judgments. Another reason why tax laws are strictly interpreted is because they seek to impose compulsory contributions by its subjects to the State's revenue. The authority that extracts from the personal coffers of any person must not be interpreted so widely and liberally that the extraction is justified despite not falling squarely within the strict letter of the law.

Since the GST regime has sought no differential treatment of taxable persons 'carrying on' the business of supplying certain goods or services and taxable persons not 'carrying on' the business in goods or services that they are supplying; it is beyond doubt that both classes of persons are to be treated at par. This is the decision of the legislature; final and binding on all.

A Classical Case of Casus Omissus

In support of the above assertion, the common law rule of *casus omissus* may be profitably invoked here. The Latin gadget, translated literally to a 'case omitted'[54], is a rule of interpretation rooted in the doctrine of parliamentary sovereignty.[55] It supposes that a case or class of cases omitted from a statute is an intentional omission by the Parliament and must be so held.[56] While the traditional debate qua the rule revolves around the unclear judicial

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[50] (1981) 4 SCC 675.
[51] 354 US 457 (1957).
[52] See *In Re: The Special Courts Bill, 1978,* (1979) 1 SCC 380; *Kerala Hotel and Restaurant Association and Ors. v State of Kerala and Ors.,* (1990) 2 SCC 502; *State of West Bengal v Anwar Ali Sarkar,* [1952] 1 SCR 284; *P.H. Ashwathanarayana Setty and Ors. v State of Karnataka and Ors.,* [1989] Supp. 1 SCC 696.
[53] (2022) 2 SCC 603.
[54] B Garner, *Black's Law Dictionary* (7th edn, West Publishing Company 1999) 210.
[55] Hardinge Stanley Giffard of Halsbury, *Halsbury's Laws of England*, [Vol 8(2), Butterworth 1996] 232–300.
[56] Trayner, *Latin Maxims* (Law and Justice 2020).

approach in applying this rule to fill the legislative gaps[57]; a sound proposition that serves the purpose of the present discussion is that except in cases of patent absurdity, the rule of *casus omissus* should be given full effect. Since legislative intent comprises enacted as well as un-enacted intent,[58] an intentional *casus omissus* demands judicial restraint.[59]

The omission of the 'carrying on business' rider from the definition of a 'supplier' under the GST legislations can be considered a clear case of intentional *casus omissus* without much difficulty. As observed in Part 2 of this article, legislative overruling of interpretations of 'business' and 'dealer' rendered by courts has been a recurring practice, which highlights continuing refinement in legislative drafting and increasingly clearer expression of the legislative intent. Such development is indicative of the legislatures learning from judicial interpretations of its drafting. It is thus not inconceivable that the drafters of the GST legislations sought to overcome the judicially constructed enquires into 'intent' and 'main objects' by omitting the phraseology of 'carrying on business' altogether.

Incidentally, such legislative overruling of the 'intent' enquiry has been specifically recognised by the Supreme Court in the cases of *Cochin Port Trust[60] (supra)* and *Hindustan Urban Infrastructure[61] (supra)* for instance. Another fact that corroborates this proposition is the understanding that the GST, being an amalgamation of various legacy laws perhaps opted for borrowing the relatively simple framework of the service tax law and chose not to borrow the contested framework of the VAT and sales tax laws as far as the definition of the respective taxable person is concerned.

Before parting with the analysis, it is a worthwhile endeavour to examine the interpretation rendered by various advance ruling authorities ("AAR") and appellate authorities ("AAAR") on this subject matter.

The Maharashtra AAAR in the matter of ***Shrimad Rajchandra Adhyatmik Satsang Sadhana Kendra[62]*** sat in an appeal over an AAR ruling that the applicant, a public charitable and religious trust, despite being formed for the advancement of spiritual knowledge, was engaged

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[57] Derek Auchie, 'The Undignified Death of the *Casus Omissus* Rule' [2004] 25(1) Statute Law Review 40.
[58] A Kavanagh, 'The Role of Parliamentary Intention in Adjudication Under the Human Rights Act 1998' [2006] 26 Oxford J Legal Stud 179.
[59] V. Niranjan, "Was the Death of the Casus Omissus Rule 'Undignified'"? [2009] 30(1) Statute Law Review 73; see also *Banwari Das v Sumer Chand,* [1974] 4 SCC 817.
[60] [2015] 4 SCR 343.
[61] (2015) 3 SCC 735.
[62] 2018 SCC OnLine Mah AAAR-GST 22.

in the business of selling books, audio CDs, DVDs etc. as per the dictionary meanings of trade and commerce. The Appellant constructed a root-to-branch challenge against this by relying on *Sai Publication Fund (supra)*, *Gujarat Maritime Board*[63] (a decision under Income-Tax law), and *Cutchi Dasha Oswal (supra)* to contend that since its primary activity was charitable and not a business, the ancillary activities can also not be a business.

The AAAR however rejected these submissions by observing that the aims and objectives of forming the charitable trust do not alter the nature of the activities of the sale of books and other material by the institution. Interestingly, it was observed that selling of spiritual material to desirous people also forms a part of the trust's objectives as reflected in its trust deed. Therefore, it was ruled that trade and commerce also formed a 'major part' of the objectives of the trust and the selling of spiritual material was not an ancillary activity. This ruling is a fine application of the 'objective standard' of 'mere supply of goods or services' contemplated under the GST regime and provides practical insights into the wide sweep of the definition.

In another matter of the ***Rotary Club of Mumbai, Nariman Point***[64], the Maharashtra AAR observed that objects and purposes for which the institution was founded were "inconsequential" under the GST legislations merely because they have not been provided expressly under section 2(17) of the CGST Act, 2017. As such, the applicant, a registered charitable trust, was found to be a 'taxable person' engaged in the business of providing services under clause (e) of section 2(17) of the CGST Act, 2017. This ruling does offer a similar insight as arrived at by our analysis above.

Before concluding with the examination of various rulings, the matter of ***Children of the World India Trust***[65] merits distinct appreciation. The Maharashtra AAR considered an application by a registered charitable trust founded to render services of welfare centres, assistance homes, adoption assistance, etc. to the destitute, women, and children. The applicant contended that its activities had no elements of business or commercial interest, especially when its adoption-related activities were strictly governed by the Juvenile Justice (Care and Protection of Children) Act, 2015.

The AAR, despite finding that the main object of the trust was the advancement of welfare programmes for abandoned and orphaned children, concluded that the adoption facilitation activity in exchange for fees was a supply of service. Notably, the order appears to have been

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[63] *CIT v Gujarat Maritime Board*, (2007) 14 SCC 704 (SC).
[64] 2019 SC OnLine Mah AAR-GST 86.
[65] 2019 SCC OnLine Mah AAR-GST 74.

passed *sub silentio* as the AAR did not give any specific finding regarding the said facility being included within the scope of 'business' and the service being 'in the course of or furtherance of business' so as to qualify as a 'supply' under section 7 and is prone to suffer the same fate as that of *Sai Publication Fund (supra)*.

4. Conclusion

The promise of the Goods and Services Tax as being a good and simple tax necessarily demands that persisting complexities of the legacy laws, which it seeks to replace, are thoroughly addressed. Such an endeavour requires the legislature to rely heavily on the interpretations rendered by the courts of the language that it adopted in the past. It is thus well said that interpretation by the courts provides invaluable assistance to legislatures in better expressing their policies and intentions.

It is apparent that the issues pertaining to the taxability of charitable institutions as suppliers and the treatment of their activities as businesses have been sought to be thoroughly addressed under the GST regime. However, the legislatures are restricted, especially for tax laws, by the strict requirements of concise drafting and it is thus left for the courts to elucidate the legislative intent in various factual scenarios that actually play out. Since the GST law is still at a nascent stage, many issues have not yet undergone the scrutiny of the courts of law. The present subject matter of charitable activities is one such instance.

In view of the same, this article undertook a comprehensive analysis of the interpretations under the legacy laws, the jural basis of concepts involved, and the expressions of legislative intentions by way of successive amendments to unlock the minds of the drafters of the GST legislations. It is observed that the definition of business under the CGST Act, 2017 appears to leave no stone unturned in legislatively excluding any exceptions carved out by the courts qua activities of charitable institutions. Business has been given its widest import so as to cover any and every activity that deals with any goods or services. The taxable event thus covers all supplies of goods and services by any person in the course or furtherance of his business. It would perhaps take immense creativity to come up with hypotheticals where some dealing of goods or services would not be considered an activity or transaction *not* in course or furtherance of business. Similarly, a supplier too has been given its widest meaning by legislatively overcoming the effects of all interpretations that sought to restrict its definition or impose riders on the same.

Therefore, the charitable institutions and their activities receive no favourable or differential treatment under the GST regime. This is the policy judgment of the legislature, which may be challenged in a court of policy – but certainly not in a court of law.