

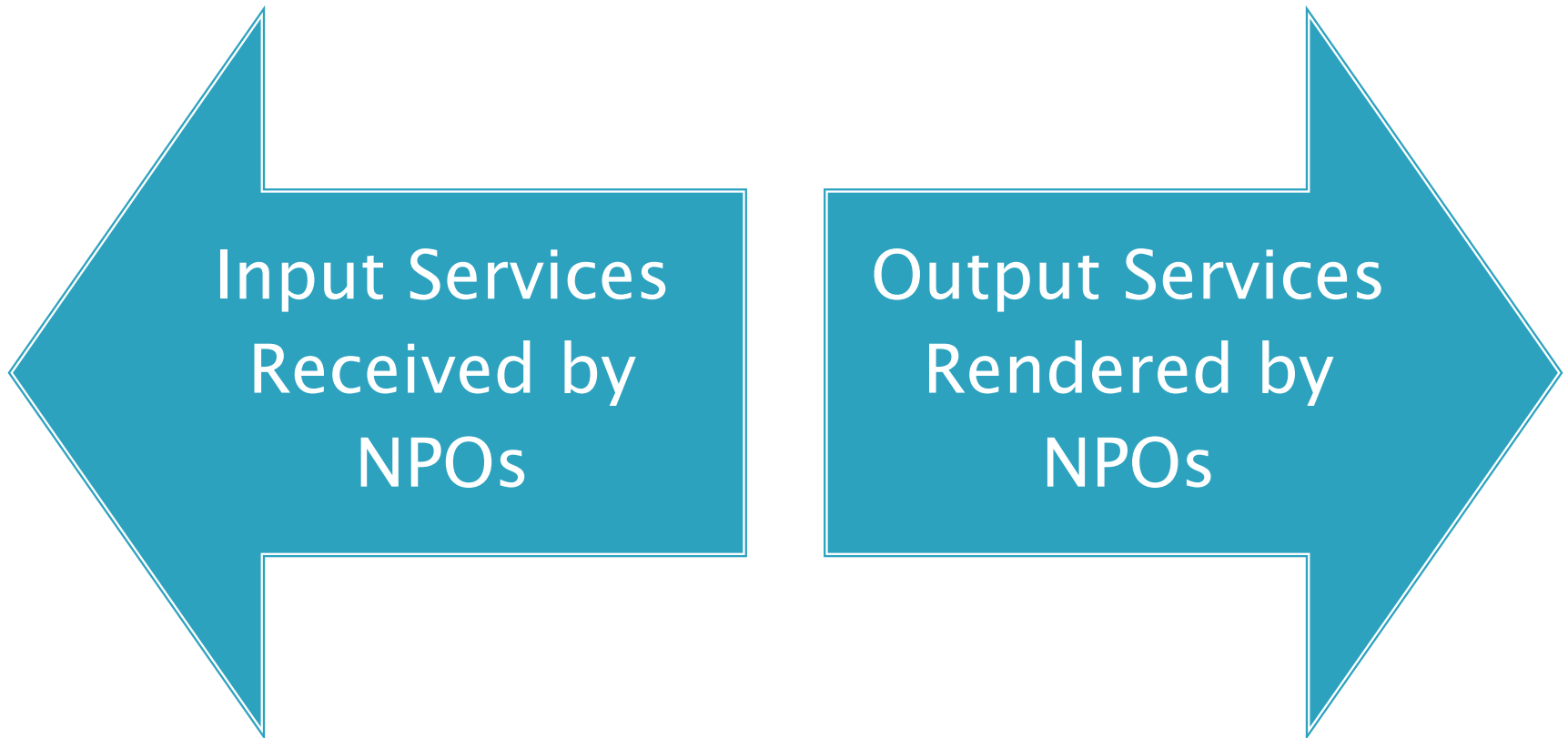
Service Tax on NPO Sector

An Analysis by CA Atul Gupta

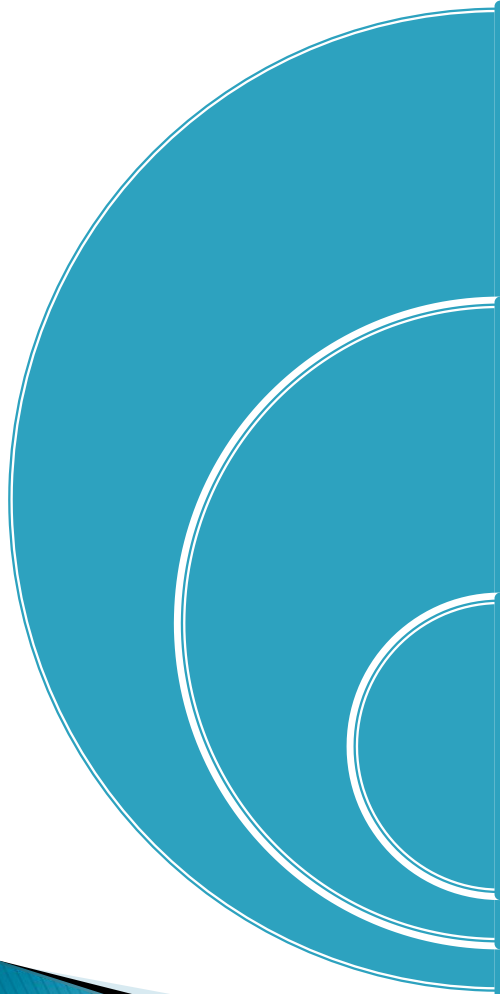
NPO Sector Covers

- ▶ Education Institutions
- ▶ Charitable Organisation registered Under Section 12AA
- ▶ Religious Activities
- ▶ Medical Establishment

Service Tax Applicability Analysis



Input Services Analysis



Construction Services	<ul style="list-style-type: none">• Earlier• Current
Outdoor Catering	<ul style="list-style-type: none">• Earlier• Current
Transportation and Auxiliary	<ul style="list-style-type: none">• Earlier• Current

Construction Services

- ▶ Position Prior to 1st July 2012
- ▶ Circular No. 80/2004
 - Construction Services to entities established solely for educational, religious, charitable, health and not for the purpose of profit.

Construction Services

- ▶ Position on or after 1st July 2012
 - Services provided to Government, Local Authority or Government Authority by way of:–
 - a) Construction, renovation, alteration;
 - b) Completion, fitting out;
 - c) Erection, Commissioning & Installation;
 - d) Repair, maintenance

of

A structure predominantly meant for use as

- a) Educational Establishment
- b) Clinical Establishment

Construction Services

- Services provided by way of
 - a) Construction, renovation, alteration;
 - b) Completion, fitting out;
 - c) Erection, Commissioning & Installation;
 - d) Repair, maintenance

of

A building owned by an entity registered under Section 12AA of the Income Tax Act and meant predominantly for religious use by general public

Outdoor Catering

▶ Position Prior to 1st July, 2012

- Catering in Academic institutions or Medical Establishments
(During 10.09.2004 to 01.03.2006)

Exempted if provided within the premises of any academic institution or medical establishment and service provider is providing such services only within such premises

(Notification No. 21/2004-ST)

- Mid-day Meal

(During 10.09.2004 to 01.03.2006)

(Notification No. 47/2010-ST read with Exemption Order No. 2/2/2011-ST)

▶ Position on or after 1st July, 2012

- Mid-day meal (specifically mentioned in Education Auxiliary Service)

Transportation

▶ Position Prior to 1st July, 2012

- Non-taxable when Cab/Motor Vehicle (except motor cab) rented for use by educational body other than a commercial training or coaching centre
{specifically excluded from the definition of cab Section 65(20)}

Motor Cab: any motor vehicle constructed or adapted to carry not more than six passengers excluding the driver for hire or reward

▶ Position on or after 1st July, 2012

- Transportation of students, faculty or staff of *institute providing exempted education* (specifically mentioned in Education Auxiliary Service)

Auxiliary Education Services & Renting of Immovable Property

- ▶ Position prior to 1st April, 2013
 - Services provided to or by an educational institution in respect of exempted education by way of
 - a) Auxiliary Educational Service; or
 - b) Renting of Immovable Property Service
- ▶ Position on or after 1st April, 2013
 - Substituted the words “provided to” in place of “provided to or by” (*Notification No. 3/2013-ST*)

Exempted Education

- ▶ Services by way of
 - (i) pre-school education and education up to higher secondary school or equivalent;
 - (ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;
 - (iii) education as a part of an approved vocational education course;

(Point (I) Section 66D–Negative List)

Education Auxiliary Service

- ▶ any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge – enhancement activity, whether for the students or the faculty, or
- ▶ any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution

Output Services

- ▶ By Educational Institutes to Institute rendering exempted education. Position from 1st July 2012 to 28th feb 2013.
- ▶ Charitable Activities
- ▶ Religious Activities
- ▶ Medical Establishment

By Educational Institutes to Institute rendering
exempted education. Position from 1st July 2012 to
28th feb 2013.

Charitable Activities

- ▶ "charitable activities" means activities relating to –
 - (i) public health by way of –
 - (a) care or counseling of (i) terminally ill persons or persons with severe physical or mental disability, (ii) persons afflicted with HIV or AIDS, or (iii) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or
 - (b) public awareness of preventive health, family planning or prevention of HIV infection;
 - (ii) advancement of religion or spirituality;

Charitable Activities

(iii) advancement of educational programmes or skill development relating to,-

(a) abandoned, orphaned or homeless children; (b) physically or mentally abused and traumatized persons;

(c) prisoners; or

(d) persons over the age of 65 years residing in a rural area;

(iv) preservation of environment including watershed, forests and wildlife

Charitable Activities

(v) advancement of any other object of general public utility up to a value of,-

(a) eighteen lakh and seventy five thousand rupees for the year 2012-13 subject to the condition that total value of such activities had not exceeded twenty five lakhs rupees during 2011-12;

(b) twenty five lakh rupees in any other financial year subject to the condition that total value of such activities had not exceeded twenty five lakhs rupees during the preceding financial year;

(Omitted vide Notification No. 3/2013-ST, w.e.f. 1st April, 2013)

Religious Activities

- ▶ Services by a person by way of —
(a) renting of precincts of a religious place meant for general public;

Meaning of Precincts:-

The dictionary meaning of precinct is “an area within a set of boundaries” or “a defined area round a cathedral/temple etc.”

*(C.C.E., MANGALORE Versus DAKSHINA KANNADA MOGAVEERA MAHAJANA SANGHA 2010 (17) S.T.R. 258
(Tri. – Bang.)*

Religious Activities

- ▶ We have to interpret the word 'precinct' in the exemption notification to mean the surrounding region or area, as defined in Collins English Dictionary or the surroundings or environs of a place as defined in the New Shorter Oxford English Dictionary

(SOUTH EASTERN COALFIELDS LTD. Versus COMMISSIONER, CUS. & C. EX., M.P. 2006 (200) E.L.T. 357 (S.C.)

"religious place" means a place which is primarily meant for conduct of prayers or worship pertaining to a religion, meditation, or spirituality

Religious Activities

"general public" means the body of people at large sufficiently defined by some common quality of public or impersonal nature.

(b) conduct of any religious ceremony

Medical Establishment

- ▶ Health care services by a clinical establishment, an authorised medical practitioner or para-medics;
- ▶ Services by a veterinary clinic in relation to health care of animals

Medical Establishment

- ▶ "health care services" means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma;

Recognised System of Medicine

- ▶ In terms of the Clause (h) of section 2 of the Clinical Establishments Act, 2010, the following systems of medicines are recognized systems of medicines:
 - a) Allopathy
 - b) Naturopathy
 - e) Homeopathy
 - g) Unani
 - h) Any other system of medicine that may be recognized by central government
 - b) Yoga
 - d) Ayurveda
 - f) Siddha

Authorised Medical Practitioner

- ▶ "authorised medical practitioner" means a medical practitioner registered with any of the councils of the recognised system of medicines established or recognized by law in India and includes a medical professional having the requisite qualification to practice in any recognised system of medicines in India as per any law for the time being in force; "clinical establishment" means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases;

Clinical Establishment

- ▶ "clinical establishment" means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases;