

Read : (1) Application for determination dt. Nil received on dt. 21.02.2013.

(2) Application for determination received on dt. 13.03.2013.

Heard: Shri Nirmal Kumar Singh, Chairman, Sulabh International, alongwith Shri Vinayak Patkar, Advocate, and Shri Mayur Parekh, Chartered Accountant.

PROCEEDINGS

(under section-56(1)(a) & (d) and section-56(2) of the Maharashtra Value Added Tax Act, 2002)

No.DDQ-11/2013/Adm-6/13 & 18/B- I

Mumbai, dt. 11.4.2016

This is a set of two applications from a common applicant, M/s. Sulabh International Social Service Organisation, situated at 52/B, Sindhi Society, Chembur, Mumbai-400071. The issues placed for determination are :

- i) Whether we are a dealer for the purposes of the MVAT Act, 2002 be determined;
- ii) Whether the transaction of construction of public toilets and maintenance thereof is a sale or purchase and if it is a sale or purchase, the sale price or the purchase price, as the case may be, thereof?
- iii) In case of adverse determination, considering the services rendered by us, it may please be directed that the determination shall not affect our liability under the MVAT Act, 2002 as respects any sale/purchase effected prior to the determination.

02. FACTS OF THE CASE

The submission as made in the application raising the first question as at above is reproduced verbatim thus :

"1. The Sulabh International Social Service Organisation is a non-profit, voluntary social service organisation of international repute engaged in social service for more than 35 years and in fulfilling the dreams of Mahatma Gandhi by liberating scavengers, restoring human rights and dignity to them and also bringing them into the mainstream of our national life. The Central Government, various State Governments and various local bodies have recognised the services of this organisation to end the demeaning practice of carrying human excreta as headload, which is a blot on human civilization. The main objectives of the Society are:

- To restore human rights and dignity.
- Prevention of environmental pollution and improvement of health, hygiene and ecology.
- Liberation of scavengers from unhealthy and inhuman occupation of manual handling of excreta.
- Rehabilitation of liberated scavengers and their wards by placement in other occupations after appropriate vocational training.
- Social upgradation of scavengers and their promotion as equals in society.
- To provide Quality education to children of scavengers along and others.
- Popularise construction of two-pit pour-flush eco-friendly toilets with onsite human waste disposal technology popularly known as Sulabh Shauchalaya.
- Designing, construction and operation of pay and use public toilets with bathing and urinal facilities in urban areas for better civic amenities and infrastructure.
- Harnessing of non-conventional energy from human waste.
- Creation of new job opportunities by training change-agents for integrated rural development. To promote consultancy, research and development in technical and social fields.

So far Sulabh International Social Service Organisation has converted 1.2 million bucket toilets into "twin pit pour flush compost toilets" now known as Sulabh Shauchalaya and with the help of Sulabh International Social Service Organisation thousands of scavengers have been liberated from the sub-human occupation. These persons have been integrated into the mainstream of the society and the movement is on to restore the human rights and dignity of more than 6,00,000 scavengers who are still engaged in this obnoxious profession. Sulabh International Social Service Organisation is also working in Afghanistan and Bhutan.

3. That Sulabh International Social Service Organisation is also engaged in imparting training in the



above said fields of sanitation and social reform to various organisations and experts from our own country and from other countries so that the Sulabh Model may be replicated by them for the benefit of their societies. Recently training was imparted in this field to persons from 14 countries which includes Ethiopia, Cameroon, Mozambique, Burkina Faso and Uganda, Kenya, Nigeria, Senegal, Ghana, Zambia, Tanzania, Cote d'Ivoire, Mali and Rwanda. The Sulabh model has also been adopted a number of countries including Bhutan, Bangladesh, Afghanistan, Burkina Faso, Ghana, Mali, Nigeria, Senegal, Tanzania and Zambia.

4. The recently expressed view of Her Excellency, The President of India, Smt. Pratibha Devisingh Patil, while addressing the women scavengers rehabilitated by our Organisation at Nai Disha, Alwar clearly reflect the importance of the activities and objects of our Organisation::

"I am very glad to know that this group of liberated women scavengers from Nai Disha, sent to the United Nations through the Sulabh International Social Service Organisation on the invitation of UN-ESOSOC put up the programme 'Mission Sanitation' – a cultural programme there and our sister Usha Chaumar was crowned. This crown is not only for you all only but for all our sisters. It is a crown from the country and a crown for Mahatma Gandhi"

"I congratulate you for what you have achieved, which you richly deserve, for which there is no comparison. You have done such a great job and I would like to tell you that Dr. Bindeshwar Pathak has brought about a revolution, a very big revolution. Financial revolution can come about and can be brought about, but to bring a revolution in the mind set of people is a very big achievement, a very difficult job, which Dr. Pathak has brought about. He increased your self-respect, your self confidence and not only your self-confidence but also showed to society what you are worth and what you can do. He has shown an example of this. And I wish that what he has shown, everyone sees. The whole country looks at it and every village looks at it and tries to do what he has done"

"And I understand that Mahatma Gandhi, is seeing this from Heaven and would be having tears of joy in his eyes. I do not think any other programme in the country would give so much happiness to Mahatma Gandhi as this one"

5. That recently on 08.12.2008, Her Excellency the President of India, Smt. Pratibha Devisingh Patil has in her address during the Presentation of Nirmal Gram Puruskar Awards in Pune expressed the following views about Sulabh International:

"Sulabh International led by Dr. Bindeshwar Pathak has done a great service to society by providing thousands of public toilets- cum- bath complexes. Simultaneously, Sulabh has also undertaken education and skill development programmes, thereby equipping people to earn a gainful livelihood."

6. That at the launch of the International Year of Sanitation (IYS) at New York on 21 November, 2007, the role of Sulabh International Social Service Organisation in the field of sanitation has been appreciated and acclaimed at the level of United Nations. His Royal Highness the Prince of Orange of the Netherlands, Chair of the United Nations Secretary-General Advisory Board (UNSGAB) on Water and Sanitation, in his speech praised the role of Sulabh International Social Service Organisation, an extract of which is reproduced below:-

"Sulabh International showed me a good example during my recent visit to New Delhi. This Organisation has proved how effective small-scale solutions can be and how they can be extended all over India within a short time span. Thousands of 'pay & use' public toilet-cum-bath complexes and more than a million pour-flush latrines in private houses have been built (and are maintained), and they are used by more than ten million people every day. By doing so, Sulabh has restored human dignity and a new future to thousands of 'untouchables'.

In India I also saw the positive results of the Total Sanitation Campaign, a good example of social innovation implemented by the Indian government. This community-led approach works to end the practice of 'open defecation' in the community as a whole and to promote the use of latrines. Bangladesh and Ethiopia are now also implementing this comprehensive sanitation campaign that combines community pressure and government rewards."

7. That it is pertinent to place on record that the activities of Sulabh International Social Service Organisation have been widely appreciated by renowned personalities and National and International Organisations. His Excellency the former President of India Dr. A.P.J. Abdul Kalam has in his book "Mission India" published in 2005, appreciated the activities of Sulabh International Social Service Organisation in the following words:-

"One organisation which works to improve the state of sanitation in the country is Sulabh, founded by Dr. Bindeshwar Pathak in 1970. Sulabh is the largest internationally recognised pan-Indian social service outfit with over 35,000 volunteers. It began through Pathak's desire to help scavengers – men and women who carry and dispose of human excreta. He developed a two-pit pour-flush toilet (known as the Sulabh Shauchalaya), which did not require scavenging to clean. Subsequently, Sulabh also started pay-and-use public toilets, popularly known as Sulabh Complexes, with bath, laundry and toilet facilities. These are used by about ten million people every day. Sulabh has also pioneered the production of bio-gas and bio-fertilizer from excreta-based plants."

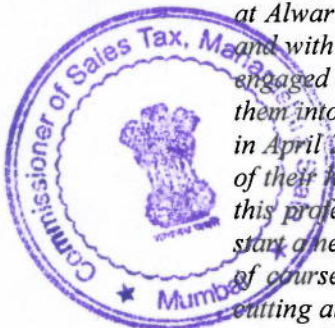


8. That Shri Bimal Jalan, the former Governor of the Reserve Bank of India has written as follows in his book "The Future of India" -
 "So far as the civil service structure is concerned, taking into account past experience and the failure to implement the reports and recommendations of numerous commissions, study groups and committees, it is necessary to recognize that it is simply not feasible to reform the system from within. The only solution is to reduce the direct role of the bureaucracy in the management of public services. International experience in the management of public services shows that delivery of services can be vastly improved if a distinction is made between the ownership of these services (by the government) and the delivery of such services (by private and local enterprises). Thus, a compilation of twenty-four case studies from twelve countries all over the world has concluded that in every case where the management of a public service was contracted out to private groups or enterprises, the distribution and quality of the service improved and the net cost to the public was reduced. In India also, there are successful examples of 'micro-privatization' (such as Sulabh Sauchalayas and Public Call Offices). These initiatives need to be replicated in respect of other services."
 "In India, two noteworthy examples of public-private collaboration in the area of public services are the public call offices (PCOs), which revolutionized the availability of telephone services all over the country in the 1990s and the Sulabh Sauchalayas, which are estimated to have provided sanitation facilities to ten million people at very low cost."
9. That at the Earth Summit, 2002 (World Summit on Sustainable Development) at Johannesburg, the work and activities of Sulabh International Social Service Organisation has also received recognition and appreciation as is evident from the following extract of the report about the Earth Summit by Darryl D'Monte in Johannesburg, which has been published in Outlook Magazine (16th September, 2002 Edition) and extract from the same reads as follows:
 "Perhaps the crowning success of the Summit was the recognition of sanitation as a major development goal. The Sulabh International Social Service Organisation was very much in evidence. Sir Richard Jolly, who heads the Water Supply and Sanitation Collaborative Council, praised founder Dr. Bindeshwar Pathak's achievements in dealing with the unmentionable over three decades. Sulabh has set up 1 million household toilets, 4,000 community blocks and freed 240 towns from the scourge of scavenging".
10. That it is submitted that even earlier various International Agencies like UNDP, UNICEF, WHO, World Bank etc. have accepted Sulabh Shauchalaya as the most appropriate low-cost technological option. In 1996 Sulabh International's low-cost and appropriate system has been recognized as "Global Urban Best Practice" by Habitat-II Conference at Istanbul. The United Nations Economic and Social Council has given Special Consultative Status to Sulabh International Social Service Organisation authorizing it to depute its representative to the United Nations at New York, Geneva and Vienna. Sulabh International Social Service Organisation was also the recipient of Dubai International Award for "Best Practice to improve the living environment" in the year 2000 and the "International Saint Francis Prize for the Environment, Cantacile of all Creatures" at ASSISI, Italy in 1992.
11. That the United Nations Environment Programme (UNEP) conferred the Global 500 Roll of Honour Award on Dr. Bindeshwar Pathak on World Environment Day, June 5, 2003 at Beirut, Lebanon for exemplary work in the field of environment. On World Habitat Day i.e. on 06-10-2003, the founder of Sulabh International Social Service Organisation, Dr. Bindeshwar Pathak, was awarded the United Nations Human Settlements Programme (UN-Habitat) Scroll of Honour Award for the year, 2003 at Palacio Cidade, Rio-de-Janerio, Brazil for his pioneering work in this field. Recently on World Environment Day i.e. 5-6-2007 the Founder of Sulabh International, Dr. Bindeshwar Pathak was awarded the 'Indira Gandhi Paryavaran Puruskar' for the Year 2003, at New Delhi for exemplary work in the field of environment.
12. That Padam Bhushan Dr. Bindeshwar Pathak has recently been awarded the 2009 Stockholm Water Prize. The Stockholm Water Prize nominating committee in it's citation has noted that the "The results of Dr. Pathak's endeavors constitute one of the most amazing examples of how one person can impact the well being of millions... Dr. Pathak's leadership in attaining these remarkable socio-environmental results has been universally recognized, and not least by those who have secured the freedom of human dignity as a consequence of his efforts."
13. That it is respectfully submitted that to appreciate the object of the activities of Sulabh International Social Service Organisation it is utmost importance to consider the history of scavenging and also the history of the movement for liberation of scavengers in India. Scavenging is the process of cleaning human excreta manually from bucket toilets and the person who are compelled by various socio-economic reasons to do this inhuman and degrading work are called scavengers. Scavenging has been continuing in India since Puranic times. It is the most inhuman and filthy occupation known to man and thus the most underprivileged and poor sections of the society were compelled by various socio-economic factors and pressures to engage in scavenging. The said practice continued through



Mauryan, Mughal and also during British rule. Though in the latter part of the British Rule, the sewer system was introduced in India, its reach was very limited and the practice of scavenging continued to plague our society. The first serious movement for liberation of scavengers in India was started by none other than the Father of the Nation, Mahatma Gandhi, who focused on the plight of scavengers and exhorted the people and non-governmental Organisations to take steps for amelioration of their lot in the second half of the 1920s. However, due to the social discrepancies which existed in those times the results achieved were very limited. When India became independent, the Government recognized the seriousness of the problem. Though many committees were formed to study the problem and make recommendations, no breakthrough could be made in the resolution of this problem. It was only in the early 1970s, when Dr. Bindeshwar Pathak, Founder of the society Sulabh International Social Service Organisation, developed the technology of Sulabh Shauchalaya, that a major impact was made in the efforts to end the scourge of scavenging. Sulabh technology is a low-cost and affordable toilet system in which the excreta is carried to leach pits from the toilet trap, where it is stored till it gets digested to organic manure and becomes safe for human contact. The Sulabh Shauchalayas not only eliminate the need for human handling of excreta but also converts the excreta to useful bio-fertilizer, which can be used for agriculture.

14. That to ensure that the advantages of Sulabh technology are spread far and wide for the benefit of the general public. As a consequence, thousands of scavengers, who had been compelled to work as scavengers have been liberated. Sulabh International Social Service Organisation is engaged not only in liberation of scavengers but also in the process of their social integration. It is involved not only in the rehabilitation of present scavengers but also their sons and daughters. The Organisation is engaged in a number of social development programmes like running of an English Medium Public School and Vocational Training Centre, programmes related to health care etc. Through the various vocation and educational training programmes imparted to them by Sulabh International Social Service Organisation these liberated scavengers have been able to reintegrate themselves into the mainstream, fulfilling to some extent the dream of Mahatma Gandhi to end the scourge of scavenging. However, even now thousands of scavengers are still engaged in the said degrading practice and therefore Sulabh International Social Service Organisation and its thousands of associate members continue to relentlessly work with selfless dedication for their liberation.
15. That as stated at the outset the basic thrust of Sulabh Sanitation Movement has been to liberate scavengers from manual scavenging. When the programme of liberation of scavengers from the inhuman practice of manual scavengers was making headway in 70's and early 80's, it was realized that liberation itself was not enough because if the liberated scavengers are not taken care of they are likely to revert back to their traditional occupation. With the picking up of programme of conversion of dry latrines into water-seal pour-flush latrines and consequent upon liberation of scavengers engaged in this occupation.
16. Sulabh International established training centres at Jambhol in Maharashtra and in New Delhi for wards of scavengers. The centre at New Delhi in Sulabh campus, which was started in 1992, now offers training facilities in 8 trades i.e. audio-visual repair, beauty care, computer application, dress designing, electrical, embroidery, tailoring (cutting and sewing), shorthand and typing. Course contents and training methods follow the pattern of Industrial Training Institutes. So far more than 4000 boys and girls have undergone different vocational training courses. Sulabh International Social Service Organisation has been continuously experimenting the programme of rehabilitation of scavengers. The recent experiences in the rehabilitation of manual scavengers relates to an experiment at Alwar in Rajasthan. The Society came to know about the problem of manual scavenging in Alwar and with a view to have a first hand knowledge he visited that place. There the women-folk who were engaged in manual scavenging. The Society promised to take them out of such a profession and bring them into the mainstream of the society. Consequently a vocational training centre was set up at Alwar in April 2003. A meeting was organized with the women engaged in manual scavenging in the vicinity of their houses at Alwar. They were selected for training at the centre with an idea to take them out of this profession and give them training so that they acquire skills, engage in gainful employment and start a new life. The vocational training centre was named "Nai Disha". A decision regarding selection of courses is taken by women scavengers themselves. They are taught food processing, beauty care, cutting and tailoring. They have now learnt to prepare pickle, pappad, masala, jam etc. They are also engaged in stitching frocks, night dress, napkins, bedsheets, saree embroidery etc. As stated supra these women were initially paid a stipend of Rs.1500/- p.m. by Sulabh for meeting the household expenditure which was subsequently raised to Rs.1800/- per month. Many liberated women have been trained in this centre. The women who have undergone training at the centre have acquired self-



confidence. In fact it has boosted their morale and they now know how to write their names and sign cheques. They have opened saving accounts in bank and operate it. The vocational training centre at Alwar is a unique case of women empowerment. The initiative in imparting training to the liberated scavengers in market - oriented trades through vocational training centres has yielded good results. The liberated scavengers are now settled in dignified employment, trades and occupations. Their socio-economic status has gone up. They are now engaged in producing their own products like garments, embroidery, pickles, papads etc. and sending it to the market for sale. Their goods are absorbed locally and are used by the persons belonging to all communities. This attitudinal change among the people towards them is remarkable as at one point of time when they were engaged in manual scavenging the people looked at them with contempt. But now they are using goods, articles, eatables prepared by them gladly and treat them on par with others. They have been now absorbed in the mainstream of the society. They have now found social acceptance with dignity. It is, therefore, submitted that Sulabh International Social Service Organisation is not like any commercial Organisation, which is engaged in earning profits. As explained in the foregoing paragraphs, it is engaged in improvement in environmental sanitation by converting dry latrines into sanitary ones, construction of individual toilets where they do not exist, construction and maintenance of public toilets, development of sanitation related technologies like generation of biogas, Water Hyacinth Technology, Duckweed based waste water treatment and Sulabh Thermophillic Aerobic Composter (STAC). Its activities are not confined only to sanitation but include, more importantly, training and rehabilitation of scavengers and their wards with a view to bring them into the mainstream of the society.

17. That the UNDP in its Human Development Report 2003 has given the following comments about the performance of Sulabh International::

"Much defecation in India still occurs in open spaces. But pioneering work by Sulabh International, a non governmental organisation (NGO), has shown that human waste can be disposed off affordably and in a socially acceptable way. Sulabh's approach is based on partnerships with local governments, backed by community participation, and has substantially improved environmental quality in rural and urban slums inhabited by poor people.

Sulabh's solution is a low-cost, pourflush water-seal toilet with leach pits for onsite disposal of human waste. The technology is affordable for poor people because designs suit different income levels. Flushing requires only 2 litres water, compared with the 10 used by other toilets. Moreover, the system is never out of commission because there are two pits-so one can always be used while the other is being cleaned. The latrine can be built with locally available materials and is easy to maintain. It also has high potential for upgrading because it can easily be connected to a sewer system when one is introduced in the area.

Since 1970 more than 1 million of the units have been constructed in houses. In addition, 5,500 have been installed in pay-and-use basis public toilets, staffed by and attendant around the clock who supplies soap for washing hands. The public toilets include facilities for bathing and doing laundry and offer free services to children and disabled and poor people. As a result more than 10 million people have received improved, low cost sanitation, and 50,000 jobs have been created.

Sulabh's door-to-door campaigns also provide free health education to millions of people. The Organisation trains local people to construct more latrines themselves, and has helped set up and maintain fee-based community toilets in slum and other areas."

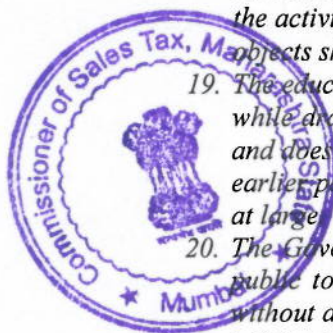
18. The Maharashtra Value Added Tax Act 2002 in the definition of 'Dealer' has included the 'Public Charitable Trust'. However, as per Exception II of the definition an educational institution carrying on the activity of manufacturing, buying or selling goods in performance of the functions for achieving its objects shall not be deemed to be a dealer within the meaning of this clause.

19. The educational institution and housing etc are of general subject for the Government and is discussed while drafting any Law or Act. But the subject of sanitation is an isolated subject for the Government and does not gain more importance while laws are drafted. The society's main objects are discussed in earlier paragraphs. The society not only undertakes training programmes but also educates the people at large.

20. The Government has relaxed the financial rules and is giving money in advance for construction of public toilets as well as the society is assigned the work of maintenance of the same for 30 years without any burden on the Government or on the Municipal Corporation. The possession of the public toilets remains with the society. For Constitution of Sale the delivery of goods is also important.

21. The Government and Municipal Corporation give implementation charges to society to meet the administrative expenses. The society is working on this programme without any profit motive. As such the society is working as an agent of the Government, Municipal Corporation and public in general and is not a dealer as defined in Maharashtra VAT Act.

22. The Income Tax Department has also registered this Society U/S 12A(a), of the Income Tax Act



exempting the Society from Payment of Income Tax.

23. *Thus, we are the pure social service organization and we do not do the business of buying or selling goods. However, the Sales Tax Officer, Pune (VAT-C-003) is of the opinion that we are the 'dealer' as contemplated under Section 2(8) of the MVAT Act, 2002 and has issued notice to us in Form No.603. This act on the part of the officer has given rise to dispute.*
24. *We therefore pray that,*
- Whether we are a dealer for the purposes of the MVAT Act, 2002 be determined;*
 - In case of adverse determination, considering the services rendered by us, it may please be directed that the determination shall not affect our liability under the MVAT Act, 2002 as respects any sale/purchase effected prior to the determination."*

The submission as made in the application raising the second question for determination is reproduced verbatim thus :

- 1. "Sulabh International Social Service Organisation (hereinafter "Sulabh Intl. ") is engaged by the State Government or the Municipal Corporations for the construction of public Toilets and the maintenance thereof, for the particular period, for and on behalf of such States or the Municipal Corporations assigning such work.*
- 2. Sulabh Intl. has enclosed herein one such agreement between the Nagpur Municipal Corporation (hereinafter "the Corporation") along with the Work Order of the Corporation dated 21.10.2011.*
- 3. The Corporation is the owner of the land and has assigned the work to get constructed public latrines, urinals and baths at necessary and important places within the jurisdiction of the Municipal Corporation for the use of members of the public.*
- 4. Sulabh Intl. has been allowed to construct or get constructed and maintain the public latrines, urinals and baths on leave and license basis.*
- 5. Sulabh Intl. should carry out construction as per the design and drawings approved by the Corporation. The staff of Corporation would supervise the execution of work. The total cost of the said complex is Rs.27,75,500 as per the prevailing schedule of rates at the time of the agreement which is inclusive of 15% over and above the estimated cost as implementation charges towards preparation of project report i.e. estimate design, plan etc. implementation of basic program of the institution, publication, motivation, printing, publicity and promotional expenses etc.*
- 6. The Sulabh Intl. is required to maintain the complex for a period of 30 years on the basis of 'pay and use' as per the conditions mentioned in the agreement. The Sulabh Intl. is permitted to charge Rs.2 for the use of latrines and Rs.3 for bath. Use of urinal would be free. Especially for slum areas, the charges for household are Rs.20 per month.*
- 7. The Sulabh Intl. is required to hand over vacant and peaceful possession of the Sulabh Shouchalaya to the Corporation on expiry of period of license.*
- 8. The Sulabh Intl. requests the Commissioner of Sales Tax, Maharashtra State to determine the following question u/s.56(1)(d) –*
'Whether this transaction is a sale or purchase and if it is a sale or purchase, the sale price or the purchase price, as the case may be, thereof'
- 9. The Sulabh Intl. prays that it may be directed that the determination should not affect their liability under the MVAT Act, 2002 considering the activities undertaken by the Sulabh Intl. as respects any sale or purchase effected prior to the determination."*

HEARING

Sh. Vinayak Patkar, Advocate, Sh. Mayur Parekh, Chartered Accountant and Sh. Nirmal Kumar Singh, Chairman, Sulabh International attended the hearing. During hearing, it was submitted thus -

- It was stated that the representative agreement with Nagpur Municipal Corporation has been submitted.
- The clause nos.3, 11, 13 and 14 were read out. As per clause no.3, the applicant gets the cost of the complex and 15% implementation charges towards preparation of Project Report, etc. The construction is carried on the land given by the Corporation/government and entire project including the construction is done for and on behalf of the Government/Corporation.

- The applicant states that they do not carry on any business. They are conducting the activity for a social cause. The complex which is constructed is owned by the particular Municipal Corporation and the licence thereof is required to be surrendered after 30 years.
- The applicant states they are the public charitable trust. However, they do not sell any goods and therefore, they do not fall within the definition of dealer, more particularly a deemed dealer. They state that they do not sell anything. The Corporation grants them the license for maintaining the complex for 30 years and at the end of the period, they have to surrender the entire complex to the Corporation.
- To the question as to whether the activity is done for parties other than Government/Corporation, it was submitted that they do it for private parties under Corporate Social Responsibility Scheme.
- A request for prospective effect was made if the contention of the applicant was not acceptable.

04. OBSERVATIONS

I have gone through the facts of the case. The first question which I need to address is whether the applicant could be termed as a 'dealer'. For that we need to understand the activities of the applicant. One sample agreement representing the activities undertaken by the applicant has been presented for determination in terms of whether the same could be termed as a 'sale'. That is the second question to be decided by me. Let me begin by going through the facts presented before me.

CONSTITUTION

The applicant has informed that it is registered under the Societies Registration Act, 1860.

MEMORANDUM OF ASSOCIATION

As per the Memorandum of Association (MOA), the Head Office of the applicant is located in the State of Bihar. As per the MOA, the aims and objects of the applicant are as follows:

- i) *"To plan and arrange for imparting theoretical and practical training to the masons, government employees, public servants, citizens and villagers in the aims and objects of the organisation.*
- ii) *To carry out necessary research and effect improvements in the organisation.*
- iii) *To plan and arrange for widespread publicity and expansion of the scheme in urban and rural areas throughout the world.*
- iv) *To render co-operation and help to all the municipalities, notified area committees, corporations, other connected organisations and government departments all over the world in abolishing the system of service latrines and assisting in the installation of Sulabh Shauchalaya in its place.*
- v) *To train Government employees in this work with the co-operation of the departments concerned.*
- vi) *To try to find out total, easy and practical solutions to many problems, like those of public health, personal health, manure, food, economic problem, the problems of Bhangis and or of unemployment, by providing, for public and general use, the Sulabh Shauchalayas system and by giving wide publicity to it, to arrange demonstration cum-training camps and to boost agricultural output with the help of manures.*
- vii) *To arrange for its publicity and education in all educational institutions, particularly in primary, middle and high schools as also in colleges.*
- viii) *To make easily available materials such as water-seal, pan etc. required for its constructions, to arrange for contractors and to prepare materials for the Shauchalayas on no-profit-no-loss basis and to construct the Shauchalayas on contract basis.*
- ix) *To render co-operation and help to the Government in ensuring proper use of Government loans and grants.*
- x) *To get literature, books, folders and leaf-lets published on the basis of up-to-date researches carried out from time to time on the Sulabh Shauchalayas.*
- xi) *To render full co-operation and help in making the Government sponsored Bhangi Mukti programme a success.*
- xii) *To adopt any constructive programme which may be prevalent at the time and to render co-operation and help to it, so that it may directly or indirectly help in achieving the objectives.*
- xiii) *To arrange for training and making trained masons available to the institutions, villagers and city dwellers from time to time as and when needed.*
- xiv) *To open branches at different places for wide publicity of the Sulabh Shauchalayas system.*
- xv) *To construct and get constructed houses for the Bhangis, to make all efforts to improve the living condition of the Bhangis. To ensure jobs to those Bhangis and their children who have been relieved from the course of*

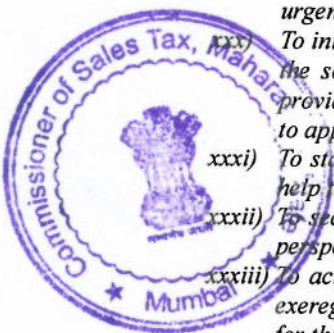


- cleaning service latrines. To arrange for education of Bhangis and their wards and to give them various kinds of vocational training, to make other necessary efforts for improving the lot of Bhangis.
- xvi) To work for all-round development of women, children and the uneducated. To construct and get constructed hostels with the help of local bodies of different towns, the Central and the State Governments for accommodation to working women. To open schools in different towns for the education of the woman folk, to arrange for their training in spinning, weaving, sewing, embroidery, typing and various other vocations so that they may stand on their own foot and earn their livelihood.
 - xvii) To render full-cooperation and help to the Government machinery in expediting the pious work of "water is life". To sink tube-wells insert water pipes, construct water towers and do other connected work for making water available to the urban and rural people. To construct and get constructed kaccha and pucca roads in rural and urban areas. To endeavour for rehabilitation of the incapacitated and delinquent children. To draw up plans for the allround development of the people of tribal areas, Bhangis and Harijans and their implementation. To construct night halt hostels (Rain Basera) in different towns for the economically weaker sections and their floating population. To construct and get constructed buildings. To do the work of slum clearance, viz improvement of roads, drains, parks, lanes and by lanes, banks of rivers, to arrange for rehabilitation of the weaker sections of the people and to do all kinds of work connected with slum clearance and environmental sanitation.
 - xviii) To open training centres for sanitary inspectors to whom training in different subjects connected with sanitation may be given in addition to training in the Sulabh Shauchalayas system. To open job oriented colleges for the unemployed youths and to impart them training to different subjects such as typing, accountancy etc.
 - xix) To construct and get constructed and instal and maintain Bio-gas production system (Bio-gas digester etc.) and conversion, distribution, utilisation systems on 'no profit no loss' basis.
 - xx) Production, promotion, extension, generation, distribution and utilization of conventional sources of energy from non-conventional / renewable / alternative sources of energy on 'no profit no loss' basis.
 - xxi) Survey and analysis of existing house hold energy needs, supply systems and their over all impact on environment and ecology of the area.
 - xxii) To carry out, research on development on various types of chullahs (house hold cooking system) for providing hygienic energy-efficient and smokeless chullahs.
 - xxiii) Application, demonstration, production and extension of results of research and development efforts through papers, seminars, training programme, prototype and large scale constructions.
 - xxiv) Study, survey, analysis, research, projection and evaluation of energy needs, projection needs, production means, socio-cultural acceptance and socio-economic aspect of using alternative/renewable/non-conventional sources of energy.
 - xxv) To undertake research projects, carry out survey and analysis available datas, prepare reports on pollution, aspect of exereta disposal system (e.g. leaching pits, bio-gas systems or any other system incidental to the above), various soil groups and different hydrogeological regions and water bodies or ground water sources wherever applicable.
 - xxvi) To establish a Research Laboratory compatable to the objectives outlined above.
 - xxvii) To initiate independently or in collaboration with appropriate bodies courses in sanitation, social work, personal management, community health and problems of the weaker section.
 - xxviii) To function as advance centre of research and training to students, working on problems of sanitation, power generation, role of voluntary organisations, weaker section and training and development.
 - xxix) To organise seminars, symposia, special lectures on different dimensions of sanitation energy, role of voluntary agency, special work, problems and status of the weaker sections, organisation building and other problems of urgent academic interest.
 - xxx) To initiate steps for providing better information as well as formal education for students of different sections of the society, specially the weaker section through the net work of its institutions throughout the country. To provide coaching classes to the students in general and the scheduled caste and scheduled tribes in particular to appear at the various competitive examinations.
 - xxxi) To start centres of specialised coachings for deserving candidates, specially of the weaker section in order to help them to secure suitable careers.
 - xxxii) To secure collaboration of eminent Indian as well as foreign scholars for the purpose of developing a proper perspective on teaching and research in didrent different fields.
 - xxxiii) To act as transmission belt and conduct for widespread effective dissemination of the Sulabha technology of exerega disposal, power generation and impact of steps for sponsoring mobilities and status elevation launched for the benefit of deprived millions.
 - xxxiv) To take up research projects on diffusion channels of communication impact and possible scope and probale areas for the spread of Sulabh Technology of excreta disposal and power generation and any other topic of urgent academic interest."

INCOME AND EXPENDITURE ACCOUNT

The Income and Expenditure Account of the applicant shows receipts on two counts :

1. Receipts from Shauchalya Nirman Works AND 2. Receipt from Shauchalaya Users, Sanitation & Others



RESOLUTION OF GOVERNMENT OF MAHARASHTRA

The applicant has referred to a Government Resolution (GR) dt.19.09.2003 issued by the Government of Maharashtra through which Sulabh International Social Service organization, Mumbai (applicant) has, subject to restrictions and conditions, been granted permission to construct Sulabh Shauchalay and bath complexes in Government Medical Colleges and Hospitals where such facilities are not sufficiently available. Certain clauses from this GR are :

1. The ownership of the premises on which the construction would be done would lie with the Government.
2. It is mandatory for the applicant organization to run these Sulabh Shauchalayas for an initial period of 30 years and also to look after its upkeep. The cost on account of maintenance and repairs and cleanliness would be borne by the applicant.
3. The cost of consumption of water and electricity including meters would have to be borne by the applicant.
4. The urinals would have to be allowed to be used without any charge. For the Shauchalayas and baths, the charges to be collected by the applicant would be Rs.2/- and Rs.3/- respectively. 10% of the services would have to be offered free of cost to the poor people. The rates would apply for the initial period of three years and subject to review, thereafter.
5. Before the construction, 20% of the approximate cost of the construction would be given to the applicant as a 'Revolving Fund' and this amount of this Advance would be adjusted in the last bill raised by the applicant.
6. The cost of construction would have to be met from out of the Personal Administrative Funds of the concerned Hospital or the C.E.T fund.

AGREEMENT BETWEEN NAGPUR MUNICIPAL CORPORATION (NMC) AND APPLICANT

The important clauses from the Agreement with regard to which the second question of these proceedings has been posed may be seen. This agreement does not make a reference to the GR mentioned above.

"An articles of agreement made between the Nagpur Municipal Corporation (In which expression shall unless be excluded by or repugnant to the context be deemed to include the successor and assigns) of the First Part, the Project Director (Slum), Nagpur Municipal Corporation hereinafter referred to as the said First Part (In which expression shall unless excluded by or repugnant to the context include his successor or successors for the time being holding the said office of the Project Director (Slum) of the FIRST PART, hereinafter collectively referred to as "The Party of the First Part" and Sulabh International Social Service Organisation, Institution having their registered office at Gandhi Maidan, Patna (Bihar), Pin Code No.800 001 and registered under the Societies Registration Act, under no.73/70-71 and having Branch Office at 52/B, Sindhi Society, Chembur, Mumbai-400071 hereinafter referred to as "The Party of the Second Part" (In which expression shall unless repugnant to the context or meaning thereof be deemed to include its successor and assigns)

AND WHEREAS the Party of the second part is a registered Society dedicated to the Public Welfare Service and is an institution recognized by different State Government has constructed and has been maintaining public latrines, urinals and baths at important places in the big towns of various states.

AND WHEREAS the Party of the First Part in order to improve the sanitary conditions in the Nagpur Municipal Corporation areas have decided to get constructed public latrines, urinals and baths at necessary and important places within the jurisdiction of Nagpur Municipal Corporation for the use of members of the public.

AND WHEREAS the Party of the Second Part has agreed to construct or get constructed the public latrines, urinals and baths at various places in the Nagpur Municipal Corporation area for the Party of the First Part as also to maintain and repair the same to provide for regular cleaning so as to ensure its continuous serviceability.

AND WHEREAS the Nagpur Municipal Corporation has accorded their approval vide Work Order no.03/Slum 21/10/11 to allow the party of the Second Part to construct or get constructed and maintain the public latrines, urinals and baths at the various places in the Nagpur Municipal Corporation limits on leave and license basis and on the terms and conditions hereinafter appearing.

AND WHEREAS the Party of the Second Part has requested the Party of the First Part to allow them to construct and maintain Sulabh Shauchalaya Complex at selected locations within the limits of the Municipals Corporation of the city of Nagpur.

1. The Party of the First Part hereby permits the party of the Second Part to construct or get constructed Sulabh Shauchalaya Complex at Medical College, Nagpur.
2. The party of the Second Part shall construct or get constructed Sulabh Shauchalaya Complex at Nagpur Municipal Corporation area in the city of Nagpur for the Party of the First Part within Ten months from the date of execution of this agreeemnt or payment of first advance whichever is later.
3. The party of the Second Part shall carry out construction as per the design and drawings approved by the party of



the First Part. The Staff of Corporation will supervise the execution of the work. The total cost of the said complex is Rs.22,85,976/= as per the prevailing schedule of rates at the time of this Agreement which is inclusive of 15% over and above the estimated cost as implementation charges towards preparation of project report i.e. estimate design, plan etc. implementation of basic programme of the Institution, Publication, Motivation, Printing, Publicity & Promotional expenses etc.

4. The Party of the First Part shall hand over possession of the site free from all encumbrances for the construction of Sulabh Shauchalaya Complex to the Party of Second Part.
5. The Party of the First Part shall pay 50% of the estimated cost along with the implementation charge i.e. Rs.11,42,988/- as an advance in two installments of 25% each, after the agreement is signed. After completion of 50% work, 40% advance shall be paid by Nagpur Municipal Corporation, and remaining 10% amount shall be paid after satisfactory completion of the project, but before the commissioning of the Complex for public use.
6. The Party of the First Part shall provide water connection on the site to the Party of the Second Part for construction, maintenance and repairs of the said work. However the Party of the Second Part shall have to follow the regular procedure for obtaining the same. Regular water consumption bills shall have to be paid by the Party of the Second Part to the respective department.
7. The party of the Second Part shall apply for electric connection to the respective authorities and get the supply for construction maintenance and repairs of the said Complex. While maintaining the said Toilet Complex the Party of the Second Part shall pay the electricity consumption bills to the respective authority.
8. The party of the Second Part shall procure cement/steel from the market for the construction of Toilet complex.
9. The party of the Second Part shall construct or get constructed Sulabh Shauchalaya Complex as per specifications and designs approved by Nagpur Municipal Corporation within Ten months from the date of execution of this agreement or payment of first advance whichever is later failing which the Party of the First part shall have right to recover the entire or part of the amount from the party of the Second Part as the case may be together with interest under the Public Demand Recovery Act or any other Act in force.
10.
11. The Corporation will permit Sulabh International to maintain the above Complex for a period of 30 years on the basis of "Pay & Use" as per the conditions mentioned in this agreement.
12. The Sulabh International shall immediately attend to the replacement of defective and damaged wiring and other electrical fittings, replacement of worn out water pipes, drainage pipes and any other fittings and removal of cobwebs if any. It will inspect Complex everyday and do the needful immediately. The Sulabh International shall make its own agreements to remove any drainage choke etc. in Complex upto the regular sewerage line from time to time. It will repair whether minor or major at its own cost and it will not claim any amount from Nagpur Municipal Corporation and shall abide by the directions issued by the Nagpur Municipal Corporation Authorities from time to time.
13. The Sulabh International shall charge Rs.2/= for the use of latrines and Rs.3/= for bath. Use of urinal will be free. Especially for slum areas the charges per household shall be @ Rs.20/- per month. The complex shall be open for public use round the clock except for four hours in the night for cleanliness i.e. 24.00 hrs. to 04.00 hrs.
Any revision in the monthly cost of maintenance or users charges shall be determined after mutual consultations between the Party of the First Part and the Party of the Second Part.
14. The party of the Second Part shall complete the work on or before stipulated period stated above and shall not raise any dispute till the completion of the work.
The Sulabh International shall attend to the complaint received from the Staff of Nagpur Municipal Corporation immediately.
The Sulabh International on expiry of period of licence shall hand over vacant and peaceful possession of the Sulabh Shauchalaya to the party of the First Part of the Nagpur Municipal Corporation or person authorised by the part of the First Part of the Nagpur Municipal Corporation. If the said license is terminated before the expiry of the said period the Party of the Second Part shall hand over the peaceful possession of the said Complex to the Party of the First Part without any dispute.
The Sulabh International shall make his own arrangements for security of the said Complex by manning the said Complex, Sulabh International shall be responsible for damage done if any to the Complex during the period of License and shall make good the loss.
15. The Party of the Second Part shall follow all the Nagpur Municipal Corporation and Government rules while carrying out the said construction.
16. The Party of the Second Part shall maintain the surrounding areas as it is.
17. The Party of the First Part shall be entitled to inspect the said work and issue orders and directions as may be considered necessary to the Party of the Second Part and the Party of the Second Part shall be bound to carry out the same.
18. The Party of the First Part shall allow the Party of the Second Part to display sign boards of Pay and Use toilets as suggested by the Party of the First Part. Nagpur Municipal Corporation name and donors name of sponsors name will also be displayed. The text and space for it will be decided by the Nagpur Municipal Corporation and its decision will be final and binding.
19. The Sulabh International shall not assign/transfer or sublet the license to any other agency. The Sulabh International shall be responsible to indemnify the Corporation from any harm or injury to life or property due to any cause etc.



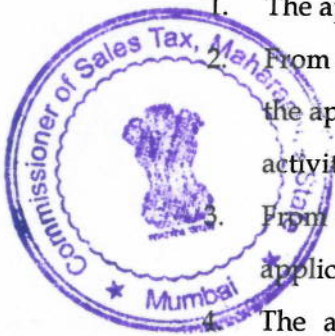
The Sulabh International Social Service Organisation shall be responsible for and shall indemnify or keep indemnified the Corporation from and against all losses suits, damages, costs, charges, claims and demands, whatsoever including claims under the Workman's Compensation Act 1925, if applicable, which the Corporation their officers, servants sustain, incur or become liable to pay any reason consequences of any injury loss or damages whatsoever that may be caused to the passers by or any other person directly or indirectly either of the life or property of the Corporation at any time thereafter due to any cause.

The Corporation shall not be responsible for any damage loss or injury caused to the property of Sulabh International Social Service Organisation staff of Party of the Second Part from any cause whatsoever.

20. *The Party of the First Part shall extend necessary co-operation and facilities to the Party of the Second Part during the Construction/maintenance of the said Complex and also provide protection to the party of the Second Part in the event of any threat arising out of any illegal activities by persons of vested interest or antisocial elements.*
21. *It is hereby agreed that any neglect or lapse on the part of the party of the Second Part to clean, maintain and repair regularly the said public latrines, urinals and bathrooms, the Party of the First Part shall be entitled to terminate this agreement after giving the reasonable opportunity to show cause to the party of the Second Part. In this case the decisions of Nagpur Municipal Corporation shall be final and binding upon the Party of the Second part.*
22. *It is hereby further agreed that the cost of any extra work carried out by the Party of the Second Part with the permission of the Party of the First part shall be payable to the Party of the Second Part together with 15% Implementation charges thereon at the time of opening the said Complex for the public use. The extra work shall be paid as per prevailing D.S.R./Market Rate.*
23.
24. *All costs and charges including the Stamp fee and registration charges shall be borne and paid by the Party of the Second Part."*

Before I begin to enumerate my inferences, I would have to remark that the present proceedings are under a taxation statute, namely the Maharashtra Value Added Tax Act,2002 (MVAT Act,2002). The applicant has extensively argued on the lines that the activities undertaken by the applicant are in the nature of social service. At the outset, I need to make it clear that I do not dispute the various activities carried on by the applicant and their social virtues. In the present proceedings, I am called upon to comment on the activities with regard to the provisions in the statute under consideration. In keeping with the same and the sample agreement tendered for determination, from a look at all above, it could be inferred thus -

1. The applicant is registered as a Society under the Societies Registration Act, 1860.
2. From amongst the activities of the applicant as understood from the aims and objectives of the applicant Society, construction of urinals, latrines and bath complexes form the principal activities.
3. From the GR and the sample agreement, it is seen that the cost of construction is paid to the applicant by the entity awarding the contract of construction.
4. The applicant constructs the needful on premises which are owned by the contract awarding parties.
5. In the present transaction, after construction of the urinals, latrines and bath complexes, the applicant is also made responsible to operate and maintain these complexes. The cost on account of maintenance, repairs and cleanliness would be borne by the applicant. However, the applicant is allowed to collect fees from the users of the premises. The fee structure is governed by the entity awarding the contract.



6. In view of points 4 and 5 above, the receipts of the applicant society as reflected in their Income and Expenditure Account are on account of *Receipts from Shauchalya Nirman Works AND Receipt from Shauchalaya Users, Sanitation & Others.*
7. During hearing, the applicant informed that they construct urinals, latrines and bath complexes for Government/Municipal Corporation and also for private parties. It was therefore seen that during the Financial Year 2011-12, the *Receipts from Shauchalya Nirman Works* included receipts from Ambuja Cement.

A reference to the website of the applicant reveals that the applicant is also into construction of biogas plants.

Meet Sulabh

Construction and maintenance of public toilets at public places and in slums on 'pay & use basis' is a landmark of Sulabh in the field of sanitation. So far it has constructed and is or maintaining over 8000 such public toilets in India and has constructed 200 biogas plants all over the country. Production of biogas from public toilets and recycling and reuse of effluent through simple and convenient method is the major breakthrough in the field of sanitation and community health.

From the above inferences as come up from the facts as made available by the applicant, one can see that the applicant is carrying on construction work of latrines and urinals and these are the regular and continuing activities of the applicant. Having seen thus, I would refer to the provisions under the MVAT Act, 2002. Since the applicant disputes being a dealer as understood under the MVAT Act, 2002, the first one to visit would be the definition of 'dealer' as found in clause (8) of section 2 of the Act and thereafter, the definition of 'sale' as found in clause (24) of section 2 of the Act. I would also refer to the definition of 'business' as found in clause (4) of section 2 of the Act.

BUSINESS

"business" includes, -

- (a) any service;
 - (b) any trade, commerce or manufacture;
 - (c) any adventure or concern in the nature of service, trade, commerce or manufacture;
- whether or not the engagement in such service, trade, commerce, manufacture, adventure or concern is with a motive to make gain or profit and whether or not any gain or profit accrues from such service, trade, commerce, manufacture, adventure or concern.

Explanation.— For the purpose of this clause, -

- (i) the activity of raising of man-made forest or rearing of seedlings or plants shall be deemed to be business;
- (ii) any transaction of sale or purchase of capital assets pertaining to such service, trade, commerce, manufacture, adventure or concern shall be deemed to be a transaction comprised in business;
- (iii) sale or purchase of any goods, the price of which would be credited or, as the case may be, debited to the profit and loss account of the business under the double entry system of accounting shall be deemed to be transactions comprised in business;
- (iv) any transaction in connection with the commencement or closure of business shall be deemed to be a transaction comprised in business;

DEALER

"dealer" means any person who, for the purposes of or consequential to his engagement in or, in connection with or incidental to or in the course of, his business buys or sells, goods in the State whether for commission, remuneration or otherwise and includes, -

- (a) a factor, broker, commission agent, del-credere agent or any other mercantile agent, by whatever name called, who for the purposes of or consequential to his engagement in or in connection with or incidental to or in the course of the business, buys or sells any goods on behalf of any principal or principals whether disclosed or not;

- (b) an auctioneer who sells or auctions goods whether acting as an agent or otherwise or, who organises the sale of goods or conducts the auction of goods whether or not he has the authority to sell the goods] belonging to any principal whether disclosed or not and whether the offer of the intending purchaser is accepted by him or by the principal or a nominee of the principal;
- (c) a non resident dealer or as the case may be, an agent, residing in the State of a non-resident dealer, who buys or sells goods in the State for the purposes of or consequential to his engagement in or in connection with or incidental to or in the course of, the business,
- (d) any society, club or other association of persons which buys goods from, or sells goods to, its members;

Explanation.— For the purposes of this clause, each of the following persons, bodies and entities who sell any goods whether by auction or otherwise, directly or through an agent for cash, or for deferred payment, or for any other valuable consideration shall, notwithstanding anything contained in clause (4) or any other provision of this Act, be deemed to be a dealer, namely:—

- (i) Customs Department of the Government of India administering the Customs Act, 1962 (52 of 1962);
- (ii) Departments of Union Government and any Department of any State Government;
- (iii) Local authorities;
- (iv) Port Trusts;
- (iv-a) **Public Charitable Trust;**
- (v) Railway Administration as defined under the Indian Railways Act, 1989 (24 of 1989) and Konkan Railway Corporation Limited;
- (vi) **Incorporated or unincorporated societies, clubs or other associations of persons;**
- (vii) Insurance and Financial Corporations, institutions or companies and Banks included in the Second Schedule to the Reserve Bank of India Act 1934 (II of 1934);
- (viii) Maharashtra State Road Transport Corporation constituted under the Road Transport Corporation Act, 1950 (LXIV of 1950);
- (ix) Shipping and construction companies, Air Transport Companies, Airlines and Advertising Agencies;
- (x) any other corporation, company, body or authority owned or constituted by, or subject to administrative control, of the Central Government, any State Government or any local authority;

Exception I.— An agriculturist who sells exclusively agricultural produce grown on land cultivated by him personally, shall not be deemed to be a dealer within the meaning of this clause.

Exception II.— An educational institution carrying on the activity of manufacturing, buying or selling goods, in the performance of its functions for achieving its objects, shall not be deemed to be a dealer within the meaning of this clause.

Exception III.— A transporter holding permit for transport vehicles (including cranes) granted under the Motor Vehicles Act, 1988 (5 of 1988), which are used or adopted to be used for hire or reward shall not be deemed to be a dealer within the meaning of this clause in respect of sale or purchase of such transport vehicles or parts, components or accessories thereof.

SALE

'sale' means a sale of goods made within the State for cash or deferred payment or other valuable consideration but does not include a mortgage, hypothecation, charge or pledge; and the words 'sell', 'buy' and 'purchase', with all their grammatical variations and cognate expressions, shall be construed accordingly;

Explanation.— For the purposes of this clause,—

- (a) a sale within the State includes a sale determined to be inside the State in accordance with the principles formulated in section 4 of the Central Sales Tax Act, 1956 (74 of 1956);
- (b)(i) the transfer of property in any goods, otherwise than in pursuance of a contract, for cash, deferred payment or other valuable consideration;
- (ii) the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract including, an agreement for carrying out for cash, deferred payment or other valuable consideration, the building, construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any movable or immovable property;
- (iii) a delivery of goods on hire-purchase or any system of payment by instalments;
- (iv) the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;
- (v) the supply of goods by any association or body of persons incorporated or not, to a member thereof for cash, deferred payment or other valuable consideration;
- (vi) the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service is made or given for cash, deferred payment or other valuable consideration;

shall be deemed to be a sale.

A look at the above provisions makes me observe that the applicant with its activities of construction of toilets fits very well into the definition of 'dealer' and the activity carried on by the applicant is 'sale' for the purposes of the MVAT Act, 2002. I would explain thus -

In the present case, the facts are seen thus -

- a. The applicant is a society.
- b. The applicant is involved regularly in construction of Sulabh Shauchalaya Complexes.
- c. The applicant is given the cost of construction of the Sulabh Shauchalaya Complex by the party awarding the contract.
- d. The applicant is involved in other activities, too. However, the activity of construction of Sulabh Shauchalaya Complexes is a regular and continuous activity of the applicant. In relation to this activity, it can be said with certainty that the applicant is carrying on business as understood by the MVAT Act, 2002.
- e. In each activity of construction, there are two parties to the transaction. In the sample agreement given for determination, the parties are the applicant and NMC.
- f. Though there is a single agreement executed between the parties to the agreement, the clauses therein reveal that there are two distinct and discernible transactions in the impugned contract awarded by NMC as follows :
 1. First is the works contract allotted for construction of Sulabh Shauchalaya Complex.
 2. The second transaction is the permission to the applicant to maintain and operate the above Sulabh Shauchalaya Complex for a period of 30 years on the basis of "Pay & Use".
- g. NMC remains the owner of the premises for the purposes of both the transactions.
- h. The consideration for the first transaction of works contract/construction contract is decided and tendered thus - *The Party of the First Part shall pay 50% of the estimated cost along with the implementation charge i.e. Rs.11,42,988/- as an advance in two installments of 25% each, after the agreement is signed. After completion of 50% work, 40% advance shall be paid by Nagpur Municipal Corporation, and remaining 10% amount shall be paid after satisfactory completion of the project, but before the commissioning of the Complex for public use. It is hereby further agreed that the cost of any extra work carried out by the Party of the Second Part with the permission of the Party of the First part shall be payable to the Party of the Second Part together with 15% Implementation charges thereon at the time of opening the said Complex for the public use. The extra work shall be paid as per prevailing D.S.R./Market Rate.*
- i. The consideration for the second transaction is also fixed such as - *The Sulabh International shall charge Rs.2/= for the use of latrines and Rs.3/= for bath. Use of urinal will be free. Especially for slum areas the charges per household shall be @ Rs.20/- per month. The complex shall be open for public use round the clock except for four hours in the night for cleanliness i.e. 24.00 hrs. to 04.00 hrs. Any revision in the monthly cost of maintenance or users charges shall be determined after mutual consultations between the Party of the First Part (NMC) and the Party of the Second Part (applicant).*
- j. The above at point c shows that before the Sulabh Shauchalaya Complex is made available for the second transaction, the first transaction is settled. The second transaction would not



start unless the first transaction is satisfactorily settled.

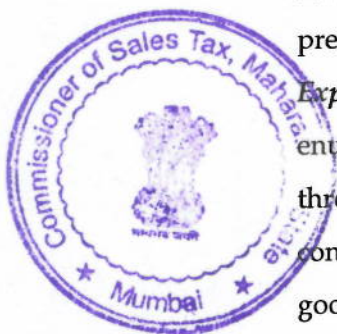
- k. The first transaction is covered by the sub-clause (ii) of clause (b) of the *Explanation* to the definition of 'sale' which covers transactions involving *the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract* including agreements for carrying out for valuable consideration, the construction of immovable property.
- l. The 'sale price' of the first transaction would be Rs.22,85,976/-. This amount would be subject to increase if any eventuality as per clause 22 of the Agreement between NMC and the applicant occurs i.e cost of any extra work carried out. The cost of the extra work shall be paid as per prevailing D.S.R./Market Rate. The valuation of this extra as per the clause 22 would be the 'sale price' for the extra work carried out.
- m. The second transaction is a lease given to the applicant to maintain and run the Sulabh Shauchalaya Complex. In a transaction of lease, the lessee pays the lease rent to the lessor. In this case, there is no direct money consideration flowing from the applicant (the lessee) to the owner (the lessor) for the lease. However, in consideration of the maintenance, repair and upkeep of the premises by the applicant, the applicant is allowed to reimburse himself the cost so incurred by allowing to charge 'fees' from the users of the Sulabh Shauchalaya Complex. Thus, in consideration of the fees, there would be activities of repair and maintenance to the Sulabh Shauchalaya Complex. The repairs would be to the property of NMC which is being operated by the applicant during the lease period. As mentioned above, the sub-clause (ii) of clause (b) of the *Explanation* to the definition of 'sale' covers transactions involving *the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract including, an agreement for carrying out for cash, deferred payment or other valuable consideration, the building, construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any movable or immovable property*. Thus, by way of allowing the applicant to collect the 'fees', the amount of 'fees' so collected would form the consideration from NMC to the applicant whenever there is a sale or a deemed sale (*agreement for carrying out construction, processing, fabrication, erection, installation, fitting out, improvement, modification, repair*).
- n. The 'sale price' of the second transaction would be the amount of 'fees' collected whenever there is a sale or a deemed sale in the form of an agreement for carrying out construction, processing, fabrication, erection, installation, fitting out, improvement, modification, repair. In absence of details before me, this amount would have to be determined during verification proceedings.
- o. Having seen that the activities of the applicant of construction of Sulabh Shauchalaya Complex, it becomes easier to turn to the definition of 'dealer' under the MVAT Act,2002.



From the definition, I observe that the applicant qualifies to be termed as a 'dealer' and even as a 'deemed dealer'. I would elaborate thus -

1. As per the definition, "dealer" means any person who, for the purposes of or consequential to his engagement in or, in connection with or incidental to or in the course of, his business buys or sells, goods in the State whether for commission, remuneration or otherwise....". The definition of 'sale' is thus - 'sale' means a sale of goods made within the State for cash or deferred payment or other valuable consideration but does not include a mortgage, hypothecation, charge or pledge; and the words 'sell', 'buy' and 'purchase', with all their grammatical variations and cognate expressions, shall be construed accordingly. It can be seen that the definition of 'sale' very expressly mentions that the words 'sell', 'buy' and 'purchase', with all their grammatical variations and cognate expressions, shall be construed accordingly. In the present case, the applicant has, in the course of his business, executed a transaction of 'sale', more particularly, a 'deemed sale' in terms of a works contract for valuable consideration and hence is a 'dealer' for the purposes of the MVAT Act,2002.
2. If we look at the *Explanation* to the definition of 'dealer', it is seen that under sr. nos. *iv-a* and *vi*, a 'Public Charitable Trust' and 'Incorporated or unincorporated societies, clubs or other associations of persons' are respectively deemed to be a dealer for the purposes of the MVAT Act,2002. Before proceeding to discuss the coverage under the aforementioned clauses at sr. nos. *iv-a* and *vi*, I would discuss about the concept of 'deemed dealer' as found under the MVAT Act,2002.

The *Explanation* states that the fiction 'deemed dealers' would operate notwithstanding anything contained in clause (4). This clause (4) pertains to the definition of 'business' which we have seen above. When a deeming fiction is made applicable, one has not to ascertain whether the deemed category carries on any business or not. Therefore, pretexts such as non-business or non-dealer cannot be entertained. A perusal of the *Explanation* for 'deemed dealer' reveals that persons, bodies and entities, as have been enumerated thereafter, who sell any goods whether by auction or otherwise, directly or through an agent for cash, or for deferred payment, or for any other valuable consideration are deemed to be dealers. Thus, the definition itself specifies that a sale of goods, whether it is by auction or otherwise would render the persons, bodies and entities enlisted in the clause to be a dealer. In the present case, we have seen that the activity of construction of Sulabh Shauchalya is a works contract for construction of immovable property and is therefore, a 'deemed sale'. There is consideration flowing to the applicant for effecting the deemed sale. Thus by virtue of the activity of 'sale' by auction or otherwise, these persons, bodies and entities are deemed to be a 'dealer'.



The *Explanation* refers to sale of goods by auction or otherwise. This *Explanation* is very broad and covers disposal of goods even other than by way of auction. Needless to say that the *Explanation* is applicable to the persons, bodies and entities as have been enumerated in the clause. Therefore, the applicant would be deemed to be a dealer for the purposes of the MVAT Act, 2002 for engaging in activities of sale of goods by auction or otherwise, if it is found enumerated in the *Explanation* to the definition. The clause (8) deems the persons, bodies and entities as enumerated therein to be a 'dealer' for the activity of sale of goods, whether by auction or otherwise. When the deeming fiction assumes a transaction of sale in auction or otherwise, I need not even deal with the argument that the applicant does not carry on any business but is doing social service. I would now look at each of the above two categories thus :

PUBLIC CHARITABLE TRUST

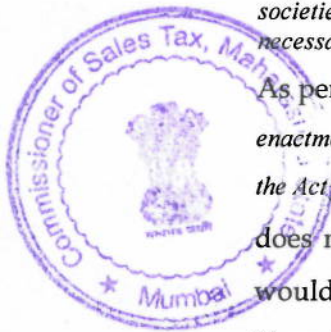
As mentioned above, the applicant is a society registered under the *Societies Registration Act, 1860*. The applicant has referred to a 'public charitable trust' being covered by the definition of 'dealer'. However, the applicant has taken the plea of the society being an educational institution which is excluded by way of the *Exception* to the definition of 'dealer'. Now, a 'public trust' under the Bombay Public Trusts Act, 1950 is defined thus-

"Public Trust" means an express or constructive trust for either a public, religious or charitable purpose or both and includes a temple, a math, a wakf, church, synagogue, agiary or other place of public religious worship, a dharmada or any other religious or charitable endowment and a society formed either for a religious or charitable purpose or for both and registered under the Societies Registration Act, 1860.

One of the F.A.Q's "Q. 8. Are all Societies trust?" on the website of the Charity Commissioner of Maharashtra is clarified thus -

In view of definition of Public Trust under section 2 (13), public trust includes society formed either for a religious or charitable purpose or for both and registered under the Societies Registration Act, 1860. All societies registered under the S.R. Act, 1860 are converted into public trust under B.P.T. Act, 1950 after necessary inquiry and following the procedure under B.P.T. Rules, 1951.

As per the Bombay Public Trusts Act, all public trusts registered under the provisions of any of the enactments specified in Schedule A and Schedule AA thereof shall be deemed to have been registered under the Act from the date on which the Act may be applied to them. The Societies Registration Act, 1860 does not find a mention therein. Therefore, it goes without saying that the applicant would have to apply under the provisions of the Act to obtain a registration therein. Now, the sr. no. iv-a merely says 'Public Charitable Trust' and no mention is made about being registered or otherwise. The applicant has informed that they haven't applied for registration under the provisions of the said Trust Act. The clause would have to be read as a registered public charitable trust as certification from or under the appropriate statute by the prescribed authority would be the only means to ascertain whether a Trust was a "Public Charitable Trust". On that count, the applicant could not



be treated as a Public Charitable Trust as understood under sr. no. iv-a of the Explanation to the definition of dealer. Therefore even though the applicant admits to being a 'public charitable trust', the facts are such that the applicant has not complied with the necessary formalities and hence, cannot be called a 'public charitable trust'. The applicant would be a 'public charitable trust' only if the required formalities are fulfilled.

Before I move on to ascertain the possibility of coverage of the applicant under the other category of '*Incorporated or unincorporated societies, clubs or other associations of persons*', I would invite attention to the determination order No.DDQ-11/2012/Adm-6/30/B-2 dt.30.12.2013 in the case of Lalbagcha Raja Sarvajanik Ganeshotsav Mandal. The applicant therein was registered under the Public Trusts Act, 1950 and the issue therein was that whether the applicant therein was a 'dealer' within the meaning of section 2(8) of the MVAT Act, 2002 and whether the activity to auction the gold and silver ornaments amounted to 'sale' under the MVAT Act, 2002. In view of the specific inclusion of a 'public charitable trust' in the definition of 'deemed dealer', it was held that the applicant is a 'dealer' for the purpose of section 2(8) of the MVAT Act, 2002 and the activity of the applicant to auction the articles, ornaments & offerings of Gold & Silver amounts to 'sale' under the Maharashtra Value Added Tax Act, 2002. This determination order was confirmed by the Hon. Maharashtra Sales Tax Tribunal in VAT Appeal No.178 of 2014 decided on 26th November 2014. On an appeal by the Ganeshotsav Mandal to the Hon. Bombay High Court, the Hon. Court confirmed the determination order in it's order in MVXA Tax Appeal No.10 of 2015 dt.28.07.2015.

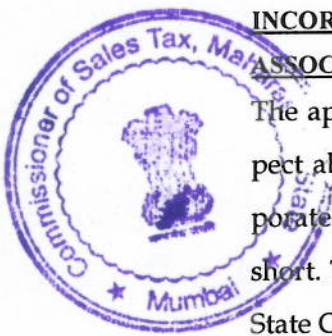
I now discuss, the other category thus -

INCORPORATED OR UNINCORPORATED SOCIETIES, CLUBS OR OTHER ASSOCIATIONS OF PERSONS

The applicant is a society registered under the Societies Registration Act, 1860. The aspect about 'incorporation' need not be even discussed as the clause covers both incorporated and unincorporated societies. Nevertheless, I dwell on the same, albeit, in short. The Hon. Supreme Court of India in the Board Of Trustees, Ayurvedic ... vs The State Of Delhi And Another on 23 October, 1961 (1962 AIR 458) had cited with approval the observations from an earlier case thus -

The justification is between incorporated societies and unincorporated societies and there can be no doubt as to which of the two parts in which a society registered under the Societies Registration Act, 1860 will fall, be it called a quasi-corporation or by any other name. A society registered under the Societies Registration Act may have characteristics which are analogies to some of the characteristics of a corporation; yet it is not incorporated and remains an unincorporated society.

Since the MVAT Act, 2002 provides for a distinct clause which covers '*incorporated or*



unincorporated societies', there is nothing left to argue that the impugned applicant who is a society registered under the Societies Registration Act, 1860 would not be covered as a deemed dealer under the *Explanation* to the definition of 'dealer'. Incorporated or unincorporated societies, clubs or other associations of persons being deemed to be 'dealer' for the purposes of the MVAT Act, 2002, it would be clear beyond doubt that the applicant society would be a 'deemed dealer' under the MVAT Act, 2002.

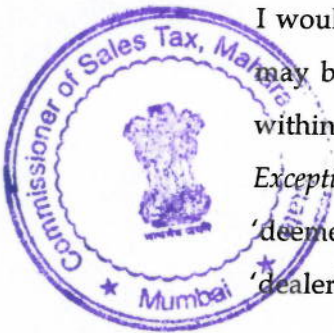
Thus, as observed on page 16, I find that the applicant qualifies to be termed as a 'dealer' and even as a 'deemed dealer' (applicant falls under '*Incorporated or unincorporated societies*' and would be a '*public charitable trust*', if the required formalities are fulfilled). And more specifically, it was seen that, in view of the deeming fiction, it is well beyond doubt that the applicant is a 'dealer' for the purposes of the MVAT Act, 2002. Now, it has been argued that the applicant is engaged in social service and so will never fall in to the category of "dealer" nor it is their business to earn any profit or gain. With regard to this argument, I have to say thus -

- As a 'dealer', I have observed hereinafter that in relation to the activity of construction of Sulabh Shauchalaya Complexes which is a regular and continuous activity of the applicant, it can be said with certainty that the applicant is carrying on business as understood by the MVAT Act, 2002.
- As a 'deemed dealer', I have already observed above that when a deeming fiction is made applicable, one has not to look for fulfillment of conditions of 'dealer' or 'business'. Besides the clause is a non-obstante clause and therefore, has rendered it redundant to look for the existence of any transactions in the nature of 'business'.

I would now dwell on the contention of the applicant that even though the applicant may be a deemed dealer, the activities of the applicant are such that they do not fall within the definition of dealer, more particularly a deemed dealer by virtue of the *Exception II* to the definition of dealer. The *Exception II* applies to both 'dealer' and 'deemed dealer'. And we have seen above that the applicant qualifies to be termed as a 'dealer' as well as a 'deemed dealer'. The said *Exception II* reads thus -

Exception II.— *An educational institution carrying on the activity of manufacturing, buying or selling goods, in the performance of its functions for achieving its objects, shall not be deemed to be a dealer within the meaning of this clause.*

As can be seen the above *Exception* is for an educational institution. The applicant cannot be said to be merely an 'educational institution'. Besides construction of Sulabh Shauchalaya Complexes as per specifications which have to be got made from professionals and got approved from the Government, Municipal Corporations or



private parties can by no stretch of imagination be said to be the activities of an 'educational institution'. The activity of manufacturing, buying or selling goods, in the performance of functions in respect of an educational institution are activities such as while teaching the students to make certain articles, manufacturing of the said articles, the purchases of items such as laboratory equipments by a college or school. All these are carried out while imparting education. The construction of a urinal, latrine or bath complexes are not included in the syllabus of any educational institution. These are civil works which are performed with the help of construction workers under supervision. No two construction activities are the same as they depend upon the available space and design.

The words 'educational institution' have not been defined under the MVAT Act, 2002. Under the Bombay Sales Tax Act, 1959 (BST Act, 1959) too, such definition was not provided. However, the then Commissioner, while interpreting the same *Exception* as above as appearing under the BST Act, 1959, in the determination order in the case of M/s. Northpoint Training & Research Pvt. Ltd. (No.DDQ-11/2003/Adm-5/18/B-3 Mumbai dt.14.09.2006), had laid down certain criteria which an institution should satisfy in order to be termed as an educational institution. Even under MVAT Act, 2002 in the determination order under the MVAT Act, 2002 in the case of M/s. Bombay Natural History Society (No.DDQ-10/Adm-5/116/B-1 Mumbai dt.06.03.2006), the criteria for an educational institution were discussed. These criteria/principles have been reiterated in the later determinations thereafter. I would enumerate them as follows :

1. *recognized as an Educational Institution by an University or the UGC, or as the case may be, by a technical or educational board;*
2. *have prescribed courses or syllabus for the alumni;*
3. *has a teaching staff which is on the payroll of the college or institution;*
4. *issues certificates to its alumni; and*
5. *conducts tests/exams as per prescribed rules.*

The applicant has not provided any certification about 'educational institution'. The applicant is carrying on various activities as understood from their website. One such activity as mentioned by me earlier was that they are into constructing biogas plants. Sulabh is described thus on the website :

Moat Sulabh

Sulabh International Social Service Organisation, a non-profit voluntary social organisation founded in 1970 by Dr. Bindeshwar Pathak, is dedicated to Gandhian ideology of emancipation of scavengers. Sulabh has been working for the removal of untouchability and social discrimination against scavengers, a section of Indian society condemned to clean and carry human excreta manually. Sulabh is noted for achieving success in the field of cost-effective sanitation, liberation of scavengers, social transformation of society, prevention of environmental pollution and development of non-conventional sources of energy. Environmental friendly two-pit, pour-flush compost toilet known as Sulabh Shauchalaya that is socially acceptable, economically affordable, technologically appropriate and does not require scavengers to clean the pits and implemented in more than 1.2 million houses all over India that has helped liberate over a million scavengers.

Construction and maintenance of public toilets at public places and in slums on 'pay & use basis' is a landmark of Sulabh in the field of sanitation. So far it has constructed and is or maintaining over 8000



such public toilets in India and has constructed 200 biogas plants all over the country. Production of biogas from public toilets and recycling and reuse of effluent through simple and convenient method is the major breakthrough in the field of sanitation and community health.

Social Reform

Dr. Pathak clearly realised that the liberation and rehabilitation of scavengers or Balmikis was not an easy task. It was indeed difficult, for the worst victims of institutionalised discrimination over the centuries, to break out of the vicious circle and join the mainstream of society. Hence, he devised a well thought-out and multi-pronged strategy to rehabilitate the Balmikis by providing them alternative employment and integrating them into the mainstream. His strategy for liberation of Balmikis through the Sulabh movement consists of a mixed package of technology, rehabilitation, with alternative employment and social reform. This holistic approach is radically different from other social reform movements in that it combines technology with social idealism. His scientific and humane approach towards abolishing scavenging is inspired by a commitment to basic human rights and based on years of research and study of the problem.

The Sulabh approach to restore human dignity to Balmikis has five distinct stages:

- a. Liberation;
- b. Rehabilitation;
- c. Vocational training;
- d. Proper education of next generation; and,
- e. Social elevation

Sulabh's determined and principled intervention has yielded good results. It has been able to liberate and rehabilitate more than a million Balmikis during its four-decade old struggle.

Traditionally, no attention was paid to occupational hazards of hygiene and health, associated with scavenging. On the one hand, society required scavengers to remove night soil by hand and carry the buckets on their hip or head. On the other side, they were socially looked down upon, and boycotted for their unclean work. Moreover, people don't realise how cruel and callous they have been towards this community and that Balmikis' civic disabilities are largely a result of the open and prolonged exploitation. There is need to sensitise people, particularly the new generation, about the nightmarish plight of this community.

Committed to stave off the historical and prolonged injustice against Balmikis, he strove hard and finally came up with a suitable technology to convert lakhs of bucket latrines into flush toilets. The two-pit pour-flush toilets developed by Sulabh caught the imagination of the nation and as a result Sulabh public and individual toilets came up all over India. At the same time, Sulabh took care to provide alternative jobs to the Balmikis, rendered jobless by large-scale conversion of privy latrines into Sulabh toilets.

Skill development is important for all but it is crucial for the less educated. To the members of depressed classes, particularly Balmikis, it has a pointed relevance. Not only are they low in literacy and education, but also possess few skills that merit market demand. Sulabh has paid special attention to skill-development and vocational training of the children from the Balmiki community. It has set up many centres and institutions across the country to equip wards from this community with vocational training in many market-friendly trades.

The problem of Balmikis is as much economical as it is socio-cultural. Traditions take time to change and require the will and initiative from all sections of society. Sulabh has evolved the modality of 'social adoption' with this in view. It is purely voluntary. All it costs is a will to shed social prejudices and compassion for fellow humans. A well-meaning and committed citizen formally and publicly adopts a Balmiki family. Subsequently, the two closely interact and visit each other's home. At times, the adopting person helps the adopted family to get over minor or major problems of social adjustment. As adopters are generally persons of social standing and prestige, their approach and interaction become role models for others. Social adoption has salutary effect on the integration of the Balmikis in the mainstream of society.

Education

The Sulabh Sanitation Movement started with the objective to liberate and elevate the status of scavengers. Towards this, it adopted a two-pronged strategy; a state-of-the-art technology to reach sanitation facilities even to the poorest, and to bring scavengers in the mainstream of Indian society. The Sulabh International, under the inspiring leadership of its Founder, Dr. Bindeshwar Pathak, branched into several inter-related activities meant not only to rehabilitate, socially and economically, those weaned away from scavenging, but also to restore their self-esteem and self-respect. Towards this, the Sulabh International Centre for Action Sociology (SICAS) was established in 1993. The main objectives were to develop a systematic understanding of the social, economic and psychological problems of scavengers or Balmikis and to evolve and implement a range of innovative, sustainable and replicable activities which would bring the Balmikis into the national mainstream.

Education holds the key to any major change and development. Literacy and education in India are woefully low, particularly among Dalits and Balmikis. In recent years, the educational infrastructure has expanded considerably and schools have been set up on commercial lines. These schools offer physical and instructional facilities comparable to those in developed countries. But very few children coming from low-income households, particularly Balmikis have access to these centres of quality education. Moreover, since most of them are first generation learners, they are hardly inclined towards the education of



their children, especially of girls. With this objective of imparting quality education, Sulabh Public School was set up in Delhi in 1992. The school aims to prepare children from the weaker sections of society for a better life. The school brings quality education within the reach of boys and girls from Balmiki families. Apart from English and Hindi, Sanskrit is also included in the curricula, not only to provide modern, but also the traditional learning, so that the children do not forget the roots of Indian culture. Previously Balmikis were not permitted to learn Sanskrit! The school also offers a wide range of support facilities. In addition, it regularly organizes co-curricular activities with a view to promoting social integration. This serves as a role-model to be replicated throughout India towards providing quality education to poor students.

The Sulabh Public School has marked features that distinguish it from others. The ratio of the students is 60 percent Balmikis and 40 percent from the general category. Balmiki students are provided free tuition fee, uniform, books and stationary. The School is recognized by the Directorate of Education, Govt. of Delhi. **It provides education up to tenth standard.** The present strength of the School is nearly 400 students.

Nai Disha

Attired in blue saris, their uniform, a group of 105 women, sharp at 6 am every morning, reach Nai Disha, literally meaning a new way, a vocational training centre started by Sulabh International in this town, known for its fountains and lakes, that is just a two-hour drive from the national capital.

Under the initiative, they are engaged in making edible items like papad, noodles, pickles and several household items.

Word soon spread about their products and now they are also available in Delhi, Chandigarh and Ahmedabad.

"We had never expected this kind of success when we started working here way back in 2003. Relating ourselves with the upper caste people was almost an impossibility, leave aside making something that could be used by the people who didn't even consider us living beings. However, Sulabh has made this happen," Saini, who has been with the centre since its inception, told IANS.

"More and more woman from our community want to join us so they too can get empowered by working here," said Saini, who can also speak in English, which she learned at the centre.

Describing the earlier situation, she said: "To avoid humiliation, we were forced to hide behind veils not because we wanted to, but because if we moved without them, people would identify us as the women who carried night soil."

As per the 1961 Census, there were around 3.5 million scavengers who used to clean human excreta. Though a lot of them changed their profession, at least 60 percent of them stuck to it because of the lack of job opportunities.

Nai Disha in-charge Rajinder Singh said the women at the centre are also taught embroidery, make-up, including bridal makeup, and making saris and jute bags.

"It was never easy for us to convince the women to join our centre. Though they were interested in overcoming the stigma that was attached to them, they were under the impression that if people come to know about it, the discrimination would aggravate. But they were wrong," Singh told IANS, adding that as they also provided things that were not available in the town – home made noodles, cotton balls and most importantly, a beauty parlour, they instantly became acceptable to society.

He said though initially several people objected to the initiative, they later accepted it.

For the women at least, life has changed not only socially but economically too.

Apart from being taken out to visit and see other parts of India, including the Maha Kumbh mela, a sacred Hindu festival held in Allahabad, they have been to Geneva, New York and London. Sulabh has arranged all their trips.

On April 30, they shared food with union Home Minister Rajnath Singh at an event in the national capital. Sulabh International Founder Bindeshwar Pathak said that for over a decade, the women have been trained in various skills.

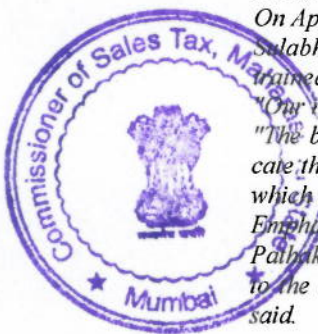
"Our next focus is to ensure that they are able to establish their own businesses," Pathak told IANS.

"The business would not only help them lead a comfortable life but also ensure that they are able to educate their children for a better career. This will automatically mean the end of caste-based discrimination, which sadly still exists in many places in India," he added.

Emphasising that the colour blue has become the symbol of women's empowerment in and around Alwar, Pathak said: "Once the women at Nai Disha are well established, the other women who are still confined to the cage of scavenging will at least think of coming out of it, which is extremely important," Pathak said.

Thus, it can be seen from the above that there are various activities carried on at Sulabh.

There is a school for students upto standard tenth. Then, there is the initiative 'Nai Disha' for women. Surely, the school or the 'Nai Disha' would not be teaching how to construct urinals or latrines. The achievements of the applicant are enlisted on the



website thus -

1.3 million Sulabh household toilets constructed
54 million Government toilets constructed based on Sulabh design
8000+ Sulabh community toilet blocks
640 Towns made scavenging free
15 million People using toilets based on Sulabh design daily

Thus, it can be seen that construction of Sulabh Shauchalya complexes is a primary objective of the applicant. And we have seen that the construction is carried on for Municipal Corporations/Government as well as private parties. Without any further deliberation, I have to observe that the activity of construction of Sulabh Shauchalaya Complexes cannot be said to be in the performance of its functions as an educational institution.

The *Explanation* to the definition of 'dealer' by way of the explicit wording provides that persons, bodies and entities, as have been enumerated thereafter, who sell any goods whether by auction or otherwise, directly or through an agent for cash, or for deferred payment, or for any other valuable consideration are deemed to be dealers. The present transaction of construction of Sulabh Shauchalya complexes amounts to a sale of goods and the applicant as a 'deemed dealer' enumerated in the *Explanation* (applicant falls under '*Incorporated or unincorporated societies*' and would be a '*public charitable trust*', if the required formalities are fulfilled) being engaging in such a transaction would be a deemed to be a 'dealer'.

Whether as a 'dealer' or as a 'deemed dealer', the activity of construction of Sulabh Shauchalaya Complexes cannot be said to be in the performance of the applicant's functions as an educational institution and therefore, the applicant cannot be said to be covered by the *Exception II* to the definition of 'dealer'. In view of the *Exception II* not being applicable to the applicant, the applicant would be a 'dealer' as well as a 'deemed dealer' for the purposes of the MVAT Act, 2002. Therefore, the argument that the applicant would not be termed as a 'dealer' in view of the *Exception* for educational institution lacks significantly in merits.



With discussions as held above, I have answered the two questions raised for determination thus :

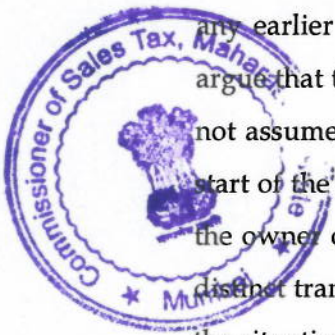
- i) The applicant is a dealer for the purposes of the MVAT Act, 2002.
- ii) The transaction of construction of public toilets and maintenance thereof is a sale.
- iii) Though a single agreement is executed between the parties to the agreement, the clauses therein reveal that there are two distinct and discernible transactions in the impugned contract awarded by NMC as follows :

- a. First is the works contract allotted for construction of Sulabh Shauchalaya Complex.
 - b. The second transaction is the permission to the applicant to maintain and operate the above Sulabh Shauchalaya Complex for a period of 30 years on the basis of "Pay & Use".
- iv) The sale price of the transactions are thus -
- a. The 'sale price' of the first transaction would be Rs.22,85,976/-. This amount would be subject to increase if any eventuality as per clause 22 of the Agreement between NMC and the applicant occurs i.e cost of any extra work carried out. The cost of the extra work shall be paid as per prevailing D.S.R./Market Rate. The valuation of this extra as per the clause 22 would be the 'sale price' for the extra work carried out.
 - b. The 'sale price' of the second transaction would be the amount of 'fees' collected whenever there is a sale or a deemed sale in the form of an agreement for carrying out construction, processing, fabrication, erection, installation, fitting out, improvement, modification, repair. In absence of details before me, this amount would have to be determined during verification proceedings.

I have gone through the contention and arguments of the applicant. They revolve mostly on the aspect of 'social service'. However, we have seen that the provisions of the MVAT Act,2002 are such that the activities of construction of urinals and latrines fall in the category of 'deemed sale' and thereby, the applicant gets covered as a 'dealer' and also as a 'deemed dealer' for the purposes of the MVAT Act,2002. The provisions under the Income Tax Act not being comparable to the ones I am dealing with, I refrain from discussing the treatment under the said Act.

The applicant has also argued that for constitution of 'sale', the delivery of goods is also important. This is with regard to the point that delivery is given after a period of 30 years or at any earlier time in view of the eventualities as described in the agreement. To this, I have to argue that the giving of delivery after a period of 30 years would not mean that the NMC would not assume ownership thereto unless the delivery is given. For all purposes and from the very start of the construction agreement to the lease for operating on pay & use' basis, NMC remains the owner of the premises. I have mentioned earlier that a perusal of the agreement shows two distinct transactions, one for the construction and the other for the lease. At no point of time, it is the situation that the applicant assumes ownership to the premises, the delivery of which has to be given so as to return the goods to the legal owner thereof. Therefore, the argument of the applicant does not find favour with me.

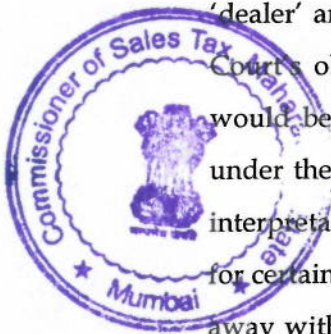
The applicant has placed reliance on the decision of the Hon. Madras High Court in the applicant's own case [Tax Case (Revision) Nos.1780, 1784, 1804, 1806, 1807 and 1840 of 2006 decided on dt.29.03.2012]. However, I observe that the provisions therein are not comparable to the ones that I am dealing with in the present proceedings. The Hon. Court held that the applicant is not



carrying on 'business' as understood under the provisions of the Tamil Nadu General Sales Tax Act. The Hon. Court while deciding whether the applicant is a 'dealer' was concerned with the interpretation of the provision regarding 'dealer' as found in Explanation (1) to section 2(g) under the said Act. The same reads thus -

"A society (including a co-operative society) club or firm or an association which, whether or not in the course of business, buys, sells, supplies or distributes goods from or to its members for cash, or for deferred payment, or for commission, remuneration or other valuable consideration, shall be deemed to be a dealer for the purposes of this Act."

The above clause provided for sales from a society to its members. The Hon. Court observed that *there is no finding by the Appellate Tribunal to the effect that there is transaction between the petitioner society and from or to its members and as a result there is no satisfaction of any ingredients in the said Explanation 1*. The Hon. Court categorically observed that *the assessee cannot be held as a dealer as per Explanation 1 since there is no transaction between the assessee and its members*. Such are not the provisions and the facts in the instant case. The provision for 'deemed dealer' under the said Act did not provide a non-obstante clause as found in the MVAT Act, 2002. The 'deemed dealers' as enumerated in the *Explanation* to the definition of 'dealer' under the MVAT Act, 2002 does not have such a condition of sale from or to its members. We have seen above that the *Explanation* to the definition of 'dealer' under the MVAT Act, 2002 states that the fiction 'deemed dealers' would operate notwithstanding anything contained in clause (4) which pertains to the definition of 'business'. The applicant as observed above falls in the definition of 'dealer' as a 'dealer' and also as a 'deemed dealer'. Admitting without accepting that considering the Hon. Court's observations that the applicant does not carry on 'business', even then the applicant would be a 'dealer', more specifically a 'deemed dealer' as the provision of 'deemed dealer' under the MVAT Act, 2002 does not have a comparable situation as found under the Act under interpretation before the Hon. Court. The *Explanation* under the MVAT Act, 2002 which provides for certain enumerated bodies and entities to be 'deemed dealers' is very unambiguous and does away with the requirement of carrying on 'business'. As mentioned earlier, such interpretation as made by me in the present proceedings has found approval with our very own Hon. Bombay High Court. In view thereof, reliance on the case law is not found proper.



05. PROSPECTIVE EFFECT

The applicant has prayed for prospective effect if the contention is not acceptable. As is always the measure, a request for prospective effect is to be weighed on the basis of the available provisions as also any mis-guidance. In the present case, the provisions were clear enough, leaving aside any scope for ambiguity. The definition of 'sale' in certain terms provided for 'deemed sale'. The definition of 'dealer' was also very clearly worded. In view of the elaborate deliberations held herein above, I am not inclined to accept the request for prospective effect.

06. It is determined thus -

ORDER

(under section-56(1)(a) & (d) and section-56(2) of the Maharashtra Value Added Tax Act, 2002)

No.DDQ-11/2013/Adm-6/13 & 18/B- 1

Mumbai, dt. 11. 4. 2016

The issues placed for determination are answered thus :

Q.1 Whether we are a dealer for the purposes of the MVAT Act, 2002 be determined?

Ans. For reasons as discussed in the body of the order, the applicant is a dealer for the purposes of the MVAT Act, 2002.

Q.2 Whether the transaction of construction of public toilets and maintenance thereof is a sale or purchase and if it is a sale or purchase, the sale price or the purchase price, as the case may be, thereof?

Ans. For reasons as discussed in the body of the order,

- a. the transaction of construction of public toilets and maintenance thereof is a sale.*
- b. there are two distinct and discernible transactions in the impugned contract awarded by NMC as follows :*
 - i. First is the works contract allotted for construction of Sulabh Shauchalaya Complex.*
 - ii. The second transaction is the permission to the applicant to maintain and operate the above Sulabh Shauchalaya Complex for a period of 30 years on the basis of "Pay & Use".*

the sale price of the transactions are thus -

- i. The 'sale price' of the first transaction would be Rs.22,85,976/-. This amount would be subject to increase if any eventuality as per clause 22 of the Agreement between NMC and the applicant occurs i.e cost of any extra work carried out. The cost of the extra work shall be paid as per prevailing D.S.R./Market Rate. The valuation of this extra as per the clause 22 would be the 'sale price' for the extra work carried out.*
- ii. The 'sale price' of the second transaction would be the amount of 'fees' collected whenever there is a sale or a deemed sale in the form of an agreement for carrying out construction, processing, fabrication, erection, installation, fitting out, improvement, modification, repair. In absence of details before me, this amount would have to be determined during verification proceedings.*



Q.3 *In case of adverse determination, considering the services rendered by us, it may please be directed that the determination shall not affect our liability under the MVAT Act, 2002 as respects any sale/purchase effected prior to the determination.*



Ans. For reasons as discussed in the body of the order, the request for prospective effect is rejected.

(RAJIV JALOTA)

**COMMISSIONER OF SALES TAX,
MAHARASHTRA STATE, MUMBAI**