



Read:-1. Application dated 25-7-2005 under Section 56 of the Maharashtra Value Added Tax Act, 2002 by M/s. Bombay Natural History Society.

2. This office letter dated 16th November, 2005 calling the applicant for hearing on 22-11-2005.

3. Letter dated 31-10-2005 from M/s. Bombay Natural History Society.

Heard:- Shri J.P.Deore [CA] and Shri Naresh Chaturvedi,curator

attended.

PROCEEDINGS

(Under Section 56 of the Maharashtra Value Added Tax Act, 2002)

No.DDQ-10/05/Adm-5/116/B-1

Mumbai,dt. 06/03/2006

An application is received from M/s. Bombay Natural History Society, having its office at Hornbill House, Dr. Salim Ali Chowk, (opp. Lion Gate), Shaheed Bhagat Singh Road, Mumbai-400 023. The applicant has sought to determine the following question:-

" Whether the society, an educational institution carrying on the educational activities like buying or selling goods in the performance of its function for achieving its objectives, is a deemed dealer within the meaning of Section 2(8)(iv-a) of the Maharashtra Value Added Tax Act, 2002.

02. BACKGROUND OF THE CASE

M/s. Bombay Natural History Society (hereinafter called as the "BNHS") is founded in the year 1883. It is the largest non-governmental organization in the sub-continent engaged in the conservation of nature and natural resources, education and research in natural history. The activities of the society are spread in more than 30 countries. Its main emphasis is on nature education. It conducts several innovative programmes aimed at environmental awareness amongst various target groups. The society is also an educational institution. It imparts training to Post graduate and doctorate students in the faculty of Botany, Ecology, Zoology, and Ornithology. It is affiliated to the Mumbai University and is declared by the University as - "the institution fit to receive Central assistance in terms of rules framed under section 18(A) of the University Grants Commission Act". It is an institute recognized by the Mumbai University for conducting post graduate courses in Master's and Doctoral degrees in the field of Ornithology & Zoology by research. It is also recognized by the Govt. of Maharashtra as an institution of higher education and research. It also receives grants from the Govt. of Maharashtra. It is duly registered under the Societies Registration Act. It is also certified as a Public Trust under the Bombay Public Trusts Act, 1950.

03. OBJECTIVES AND ACTIVITIES

The main objectives of the BNHS are :

- 1) Scientific research and education in natural history and nature conservation.
- 2) Interaction with policy makers, legislators, industry and the public for protection of natural habitats.
- 3) Conservation awareness among masses through research, education, literature, awareness campaigns and conservation movements.

RESEARCH

The society's guiding principle has always been that conservation must be based on scientific research. These studies have provided crucial data for management and conservation of India's rich bio-diversity. The research contributes mainly to identify, monitor and mitigate the adverse impact of unplanned, non-sustainable developmental processes on our natural environment. This is achieved by conducting research on indicator species of plants and mammals in sensitive natural habitats across the country. It has been realized that healthy environment can play a crucial role in the long term sustainable development of the region resulting in the upliftment of the local population. The BNHS research projects are designed to mitigate the adverse impact of developmental projects on the ecosensitive areas as well as restoration of degraded environment. Ministry of Environment and Forests, Government of India, has recognized BNHS as the regional nodal agency to hold wildlife regional meetings in the western region of India, comprising of the states of Maharashtra, Goa, Rajasthan, and Gujarat.

ENVIRONMENT PROTECTION

BNHS has rich technical expertise of committed and qualified scientists and field biologists. The scientists depend on sophisticated laboratory and a full-fledged computer section with advanced software for necessary environmental impact analysis (EIA). Both the Government as well as the private sector rely upon the findings of the studies for planning developmental activities and declaring some of the protected areas.

SCIENTIFIC EDUCATION

Since 1957 the BNHS is a postgraduate department, affiliated to the University of Bombay and offers M.Sc (by research) and Ph.d degrees in Ecology and Conservation Biology. It now has a total capacity of 20 seats for M.Sc and 20 for Ph.D students.

SCIENTIFIC COLLABORATION

The scientific research of the BNHS has been conducted in many cases by scientific collaboration with international institutions.

LEGISLATION FOR THE PROTECTION OF WILDLIFE

The BNHS was closely involved in the development of the Bombay Wild Animal and Wild Bird Protection Act.

PUBLIC EDUCATION

Conservation education is targeted at both urban and rural populations. The nature conservation education activities of the BNHS generally constitute a minimum of 52 slide shows/videotapes/ films, 52 weekend nature walks, nature camps, training workshop on techniques such as bird ringing and short certificate courses in natural history for the general public. Additional activities, such as snake exhibitions, wildlife painting competitions, nature quizzes, exhibition of rare books on wildlife and of wildlife stamps, tree plantation programmes and bird counts are also undertaken.

Besides these regular activities, the BNHS also conducts specialized workshops for different target groups such as defence personnel, mountaineers and trekkers, journalists and rural population.

PUBLICATIONS

The BNHS is responsible for many of the first natural history publications in India. Many of these still continue to be the primary reference source for amateurs and professionals. Many of the BNHS publications are essential acquisitions of naturalists, amateurs and professionals.

MEMBERSHIP OF SCIENTIFIC SOCIETIES WITH INTERNATIONAL REPUTE

NATIONAL AND INTERNATIONAL RECOGNITION

National and international recognition has been accorded in various ways to BNHS as an organization and also to individual personalities associated with BNHS.

AWARDS AND GRANTS

It receives grants from the Government of India and also donations for its various activities.

In short, the BNHS is recognized as one of the oldest non-governmental organization in India concerned with the natural environment. It is the first research organization in India in the field of ecology and natural history. It has a network of members, volunteers and alumni throughout the country and abroad.

The Memorandum of Association of BNHS speaks of the following :

- (a) To promote knowledge amongst the public of natural history in all its branches.
- (b) To carry out research in all branches of natural history.

04. DETAILS SUBMITTED WITH THE APPLICATION

The details submitted by the applicant along with the application are as under :

- (1) Certificate of recognition by the University of Mumbai.
- (2) Certificate of Registration under the Societies Registration Act No. XXI of 1860.
- (3) Certificate of Registration as a Public Trust under the Bombay Public Trust Act, 1950.
- (4) Notification issued under the Bombay Sales Tax Act, 1959 granting exemption on certain sales of goods by the BNHS.
- (5) Memorandum of Association and Rules and Regulations of BNHS.
- (6) Certificate granting exemption under Section 80G of the Income Tax Act, 1961 from the Director of Income Tax (Exemption), Mumbai.
- (7) Annual Report & Accounts for the year 2001-02, 2002-03, and 2003-04.
- (8) A note on BNHS clarifying the background, objectives, research, environmental protection, scientific education, public education, publications, awards, memberships of BNHS.
- (9) Past and present achievements of the BNHS.

05. CONTENTION AND HEARING

The case was fixed for hearing on 22-11-2005 when Shri J. P. Deore, Chartered Accountant and Shri Naresh Chaturvedi, curator attended. They argued that the trust is an educational institution and therefore covered by the Exception-II to the definition of dealer under the Maharashtra Value Added Tax Act, 2002. It was their point that the trust is an educational trust affiliated to the Mumbai University and gets donations from the Government of Maharashtra. It undertakes the sales of publications, greeting cards, T-Shirts, calendars, and diaries in the course of its activities as an educational institution.

It was strongly argued that the applicant's activity is not a business activity as per the definition of

business under Section 2(4) of the MVATA Act, 2002 and hence, the applicant is not dealer for the purposes of the Act. He relied upon the Supreme Court judgment in the case of M/s. Sai Publications [126 STC 212].

The BNHS is of the opinion that the society is an educational institution carrying on the educational activities like buying and selling goods in the performance of its functions for achieving its objectives. The Society was granted an exemption from payment of sales tax and purchase tax as per Section 41 of the Bombay Sales Tax Act, 1959. The society is of the opinion that it squarely falls under the Exception-II to the definition of 'dealer'. It is further argued that looking to the status and nature of the activities being carried out, the society needs to be exempted from the application of the provisions of MVATA, 2002. It is alternatively, argued that, in case the applicant is held liable for payment of tax then his liability be protected till the date of this order.

O6 .OBSERVATIONS

Let us first look at the treatment given to the trust under the B.S.T.Act. Under the Bombay Sales Tax Act, 1959, the treatment to BNHS was as follows :-

For the period 1/10/1995 to 30/04/2000, only sale of paper by a registered dealer to BNHS was exempt from whole of tax. From 1/05/2000 to 31/03/2005, the word "paper "was replaced by the word "goods".

[A] Sales of goods by a registered dealer to BNHS were exempt from whole of tax subject to fulfillment of certain conditions attached.

[B] Sales of various goods except those at [A] above by the BNHS was exempt from whole of tax subject to fulfillment of certain conditions.

Thus, under the Bombay Sales Tax Act, 1959, the sale of various goods by a registered dealer to BNHS were exempt from tax. Also the sale of various goods [other than those goods, the purchases of which were exempt from tax] by the BNHS was specifically exempted from whole of tax.

Also under the Bombay Sales Tax Act, 1959, the definition of dealer did not include "public charitable trust" as a deemed dealer.

07. I have gone carefully through the details submitted by the applicant.

From the various evidences produced before me, I have absolutely no difficulty in forming an opinion about the nature/activities of the BNHS. It is undoubtedly recognized as an educational institution and is affiliated to the University of Mumbai [Bombay]. It is registered under the Societies Registration Act. It is also a Public Trust registered under the Bombay Public Trusts Act, 1950. Herein comes the discussion as to whether the BNHS is a dealer for the purposes of the Maharashtra Value Added Tax Act, 2002. Let us now take a look at the definition of dealer,

"Section 2(8) of the Maharashtra Value Added Tax Act,2002 defines dealer as *"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."*

In the present case of BNHS, the main activity/object of BNHS is to promote knowledge amongst the public of natural history in all its branches and to promote conservation of nature and natural resources. In pursuance of these objects, it carries out research for which there are bound to be transactions of purchases of goods, equipments, etc. Herein, it is their argument that their activity of sale and purchase of products is not a business activity as contemplated in sec. 2 (4) of the MVAT Act, 2002.

Under the Bombay Sales Tax Act, 1959, the definition of dealer did not include "public charitable trusts". With the introduction of the Maharashtra Value Added Tax Act, 2002, the definition of dealer is widened so as to

dealer that carrying on of a business activity would not be a prerequisite for the deeming fictions to become a dealer. Hence, once it is established that a public charitable trust is a deemed dealer then all the characteristics of the definition of dealer are applicable to the public charitable trust.

When a legal fiction is created in the Act, then it automatically takes all those facts on which the fiction can operate. It is a rule of interpretation well settled that in constructing the scope of a legal fiction, it would be proper and even necessary to assume all those facts on which alone the fiction can operate. A construction which defeats the very object sought to be achieved by the Legislature, must if possible, be avoided.

On this note, we could take a look at the judgment of the Supreme Court of India in the case of Commissioner of Income Tax, Delhi V/s. Teja Singh Dalmia Jain Aviation Ltd (now Asia Udyog Ltd) [Nov. 5, 1958] wherein the following observations were noted.- " A statute is designed", observed Lord Dunedin in Whitney V/s. Commissioners of Inland Revenue, to be workable , and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable". In view of the above facts, the applicant does not succeed in his initial argument that since his activity is not a business activity, he is not a dealer under the Maharashtra Value Added Tax Act, 2002.

We now come to the main plank of the applicant's argument that by Exception-II to the definition of dealer an educational institution shall not be deemed to be a dealer and since they fulfill the said criterion, they are not liable for registration under the Act. The said Exception II reads thus :

"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."

This exception means an educational institution shall not be deemed to be a dealer only for those activities of manufacturing, buying or selling which are performed for achieving its objects. Any buying or selling activity not in pursuance of the objects of the institution would attract the institute being treated as a deemed dealer and assessed to tax, if any, arising from the transactions performed.

This exception to the definition of dealer as regards excluding educational institutions from the purview of the definition of dealer existed even under the Bombay Sales Tax Act. The applicant, however, never put forth his claim as an educational institution under the Bombay Sales Tax Act. This could be due to the fact that the Government had extended the benefit of exemption to both their purchases as well as sales by issuing a notification u/s 41 of the Bombay Sales Tax Act, 1959.

Commonly speaking, the educational institutions that would be excluded from the purview of the definition of 'dealer' are those institutions which satisfy all the following five criteria simultaneously, namely ;-

- 1) Is recognized as an educational institution by a University or the UGC, or as the case may be, by a technical or educational board.
- 2) Has prescribed courses or syllabus for the students.
- 3) Has a teaching staff which is on the payroll of the college or the institution.
- 4) Issues certificates to its students.
- 5) Conducts tests/exams as per prescribed rules.

Therefore, it is necessary to see whether the applicant holds a valid recognition as an educational institution from any Board/University and whether it is affiliated to any Board/University. The applicant has produced evidence thereof before me. The applicant is recognized by the Mumbai University and offers various

University and from the UGC. The society has prescribed a syllabus for the students and has a teaching staff on the payroll. The students of the society are appearing for the examinations conducted by the Mumbai University and the degrees are awarded by the University. These evidences furnished by the applicant helps me in confirming the view that the applicant is an educational institution as contemplated in Exception-II to the definition of dealer.

Having formed this opinion, I proceed to assess whether the activities of sale and purchase of the applicant are in pursuance of the performance of functions for achieving its objects. Merely being an educational institution is not sufficient to qualify for the benefit of Exception-II. The exclusion from the ambit of dealer is available only to those educational institutions whose activities of manufacturing, buying, selling or supplying goods are in the performance of their functions for achieving their objects.

This point now needs to be elaborated, i.e., whether the activities of manufacturing, buying or selling carried on by the BNHS are in performance of functions for achieving the objects of BNHS ? Hence, let us take a look at the activities of the dealer, i.e., the activities in the nature of manufacture, buying and selling.

The Annual Report and Accounts provided for the years as mentioned below throw light on the following facts and figures from the Income & Expenditure Account :-

[A] INCOME

(In Rs.)

INCOME / YEAR	2001-02		2002-03		2003-04	
	NET	ACTUAL	NET	ACTUAL	NET	ACTUAL
From products	2318834.62	8105831	820995	5600000 (approx.)	703039	6248550.97
From BNHS Publications (Net)	699747.74	-	857586	-	943354	-
From Events	122707.95	-	-	-	392139	-

[B] OTHER RECEIPTS

(In Rs.)

OTHER RECEIPTS /YEAR	2001-02	2002-03	2003-04
Miscellaneous Receipts	19130.83	127473	296162
Surplus on sale of vehicles	123441.00	-	157999

[C] PRODUCTS DEPARTMENT

The products division was started in 1980's as a fund raising activity largely to support the research establishment of the society. The products are now a stable source of income for the society and have established a name for quality. The main products sold by the societies are publications, calendars, diaries, greeting cards, T-shirts, caps, jute bags bird call cassettes etc. Besides helping in the efforts to spread the nature conservation message, the income derived from this department has steadily become an integral part of the Society's annual income.

After a Study of the above facts and figures, I proceed to observe as follows :-

As regards the activities of sales of products, I need to take a look at the sales of customized calendars,

greeting cards, and posters, BNHS T-shirts, BNHS mugs, products BNHS, BNHS banners and BNHS paper. The annual Reports for the three years show that customized special calendars, special greeting cards and separate products are also designed for some corporate clients.

The product department, it seems is a commercial activity. With a view to enhancing the efficiency of the product department, the same was restructured and named central marketing department. The result was an obvious increase in the sales of the products. It can be thus seen that various innovative schemes are being resorted to by the BNHS to augment their sales of the various products. The activity of producing customized greeting cards and calendars, customized products, T-shirts, caps, stickers, mugs, bird posters, etc., seems to have absolutely no connection with the education activity of imparting knowledge for various degree and research courses offered by the society. Thus, it can be seen that the activity of sale and purchase of the various products is an independent commercial activity of the society. The activity of sale of various products is certainly not an activity of an education institution in performance of its duties to achieve its objectives. For the purpose of its activities of manufacturing, buying or selling, the BNHS would be a deemed dealer.

08. PROSPECTIVE EFFECT

The applicant's alternate prayer of giving a prospective effect, however, seems acceptable. It is due to the fact that the applicant was granted an exemption under the earlier law i.e. up to 31/03/05 and under the present MVAT Act, they have not collected any taxes since 1/4/2005. The applicant is a public charitable trust and not much conversant with the provisions of the Act. They, however, proved their bonafide by approaching the department to clarify their liability under the statute.

The applicant is a public charitable trust. The Supreme Court in the case of M/s. Sai Publications [126 STC 212] observed that, if the dominant activity is not a business then the incidental activities of sales and purchases of goods do not make him liable to be a 'dealer' under the Act.. The applicant was guided by the apex court judgment and therefore, was under bonafide belief that, they are not liable for registration even under the MVAT Act, 2002. I, therefore, concede to the request of the applicant for prospective effect and hereby protect their liability till the date of this order.

09. CONCLUSION

In the light of the discussions held hereinabove, I have come to the conclusion that although the applicant fulfils the criteria of an educational institution, its sale of the various products is not in performance of the functions of achieving the objects of the society. The sale of various products of the society is an independent commercial activity of the applicant and hence would not get covered under the exception II provided to the definition of 'dealer' u/s 2 (8) of the MVAT Act, 2002.

In view of the discussion held in the para No. 8, I decide to protect the liability of the applicant till the date of this order.

10. In view of the deliberations held hereinabove, I pass the following order :-

ORDER

(Under Section 56 of the Maharashtra Value Added Tax Act, 2002)

No.DDQ-10/Adm-5/116/B- 1

Mumbai, dt. 6/3/2006

The question before me as regards "Whether the BNHS is an educational institution carrying on the activity of buying or selling of goods in the performance of its functions for achieving its objectives and hence not a 'deemed dealer' within the meaning of the Section 2(8)(iv-a) of the MVAT Act, 2002, is herewith answered in the

(B. C. KHATUA)

**Commissioner of Sales Tax,
Maharashtra State, Mumbai.**

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