

Read : 1. Application dated 17th June, 2005 under section 56 of the Maharashtra Value Added Tax Act, 2002 from The Nab Workshop for the blind

2. Letter dated 16-11-2005 from this office calling the applicant on 22nd November 2005 for hearing.

Heard : Shri Jignesh Shah, C.A along with Shri A. A. Murlidhar, Superintendent.

PROCEEDINGS

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

No.DDQ-10/2005/Adm-5/89/B-2

Mumbai,dt.13/03/2006

An application is received from The NAB Workshop For the blind' of Dr.Annie Besant road, opp. old Passport office, Worli, Mumbai-400 030, seeking determination of the question as follows :

"Whether the applicant is a dealer within the meaning of Section 2(8) read with Explanation (iv-a) of the Maharashtra Value Added Tax Act, 2002 and whether EXCEPTION II to the definition of dealer wherein educational institutions are exempted from the purview of the definition of 'dealer' would be applicable to him."

DETAILS SUBMITTED ALONGWITH APPLICATION

02. The following details have been submitted by the applicant :-

- (1) Public Trust registration deed describing the trust's activities, objects etc.
- (2) A letter dated 30th August, 2004 from the Maharashtra State Board of Vocational Examination.
- (3) Certificate of recognition from Maharashtra State Board of Vocational Examination for acupressure and massage courses [for blind only] conducted by the institute.
- (4) A statement describing the various courses offered by the institute, the items purchased for teaching the various courses and the items made by the visually handicapped.
- (5) Certificate of Registration under the Bombay Sales Tax Act, 1959.
- (6) A letter by the Commissioner of Sales Tax, Maharashtra State, informing the applicant about exemption from tax by notification issued under section 41 of the Bombay Sales Tax Act, 1959.
- (7) A brochure describing the various activities at The Nab workshop For the blind.
- (8) Income & Expenditure Accounts for the years 2002-03, 2003-04 and 2004-05.

OBJECTS OF THE TRUST

03. The objects of the workshop, which is a training institution, are as follows:-

- (a) It aims at training the adult blind, normally between the ages of 18 and 40, in industries and vocations suitable for them and preparing them to give full commercial output and efficiency in such industries or

- (b) It aims at training the blind, who have aptitude for skilled or semi-skilled work in suitable Light Engineering jobs, Machine jobs, Fabrication Jobs and Contract work with a view to their ultimate absorption in open competitive industry or self-employment.
- (c) It aims at doing everything possible for the medical rehabilitation, social adjustment, vocational training and economic rehabilitation and welfare of the blind trainees.

BACKGROUND OF THE CASE

04. The foundation stone for this premier institute was laid on 26th February, 1955 by the late Dr. (Miss) Helen Keller. It is both nationally and internationally recognized as one of the best institutions of its kind. It is registered with the Charity Commissioner, Maharashtra as a Public Charitable Trust. It is recognized by the State and Central Government. The institute conducts workshops, which impart vocational training to adult visually handicapped persons in various trades to facilitate their rehabilitation in life with dignity through either self-employment or placements in related open industries.

The institute offers the following courses for the blind adults :-

A] INDUSTRIAL TRAINING : Under this head, the following two years courses are covered :

- (a) Light Engineering
- (b) File making
- (c) Brush making
- (d) Wood work
- (e) Tailoring
- (f) Assembly work
- (g) Motor and coil winding

The institute is the first of its kind in India to introduce training for the blind on power-driven machinery. As a part of training , the institute also takes orders for making various items that are relevant to the above trades.

B] TRAINING COURSES FOR THE EDUCATED BLIND

- (a) Stenography course (English)
- (b) Stenography course (Marathi)
- (c) Telephone operator course.

The institute boasts of having trained over 2200 blinds and a large number of them have been either employed in the open industries or rehabilitated through self-employment.

C] OTHER FACILITIES : The institute provides :-

- (a) Conveyance/free food for day scholars
- (b) Hostel accommodation and food for about 100 trainees (residential)
- (c) Uniforms and medical aid , free of cost

(e) Financial assistance for higher studies

(f) Annual picnic, sports and other cultural entertainment and recreational programmes

D] LOW VISION CENTRE :

The institute has a full-fledged and well-equipped Low Vision Centre, which was started in the year 1984. It treats patients with residual vision that cannot be cured either surgically or by medication. Till today, the centre has examined /tested about 15845 low vision patients and provided optical aids to nearly 8016 patients to derive maximum benefit from residual sight.

Nab Kantaben and Varjivandas Saraiya Low Vision Centre conducts workshops which impart intensive vocational training to the visually handicapped in the age group of 18 to 35. Low vision aids provided are of many types, such as simple lenses, hand held magnifiers, stand magnifiers, telescopic lenses, spectacle mounted telescopic magnifiers, bar magnifiers, torch magnifiers, C.C.T.V. Clip Magnifiers, etc. The centre has also imported some telescopic lenses from Japan which are useful for distant vision. This centre has been able to provide magnification aids to a large number of persons with impaired vision who could not be benefited by ordinary spectacles.

The centre, thus, provides :-

- (a) Magnifying and telescopic lenses and optical aids.
- (b) Rehabilitation services.
- (c) Psychological, Social & Vocational Guidance.
- (d) Supporting welfare services.

The institute imparts vocational training to the visually handicapped over a period of two years on various diversified trades and skills to qualify them for absorption in open industries or self-employment. Some of the trainees are employed in open industry as packers, assemblers, machine operators, fitters, core makers, armature winders, case nailers, tailors, typists, stenographers, telephone operators, etc. The training aims to impart the above skills at the same level as would have been imparted to a normal-sighted person. They earn the same wages as the sighted giving same output as the sighted and are no less efficient than the sighted.

The institute is only partially funded (approximately 20% of total recurring expenditure) by the Social Welfare Department of the Government of Maharashtra. The balance finances are sought from various financial institutes, industries, individuals and charitable trusts in the form of donations/grants from time to time.

CONTENTION AND HEARING

05. Shri Jignesh Shah, C.A. along with Shri A. A. Murlidhar, Superintendent of the institute attended the hearing. They stated that the applicant is a Public Charitable Trust running vocational courses for the blind. The courses have approval of the Maharashtra State Board of Vocational Examination. It is argued that, their activity cannot be termed as a business activity as provided by Section 2(4) of the Maharashtra Value Added Tax Act, 2002. However, the main plank of the argument of the applicant is that, they are fully covered by the Exception-II to the definition of 'dealer' under Section 2(8) of Maharashtra Value Added Tax Act, 2002, wherein an educational institution carrying on the activity of manufacturing, buying or selling goods in the performance of its functions for achieving its objects is excluded from the ambit of the definition of the dealer. It is stated that, the various goods that are sold by the institute are the items made by the trainees while imbibing the skill. The sales and purchases of the goods are, thus, in the performance of the functions for achieving the objects and hence, they are not liable for

the institute was getting the benefit of exemption from sales tax. Hence, the applicant's request that the same may be continued under the Maharashtra Value Added Tax Act, 2002.

OBSERVATIONS

06. I have carefully gone through all the facts involved in the present case.

Let me take a look at the treatment given to the applicant under the Bombay Sales Tax Act, 1959 and under the Maharashtra Value Added Tax Act, 2002.

UNDER THE B.S.T.ACT, 1959

The applicant was duly registered under the earlier repealed B.S.T. Act, 1959 as a "Training Institute".

Under the B.S.T. Act, 1959 also, the definition of dealer had an Exception which read thus : *"An educational institution carrying on the activity of manufacturing, buying, selling or supplying 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."*

The applicant had registered itself as a "dealer" under the Bombay Sales Tax Act, 1959. However, it was granted exemption from whole of tax by notification under section 41 of the Bombay Sales Tax Act, 1959. As such, all the sales and purchases effected by the applicant were free from the whole of tax.

A reading of the conditions from the notification brings forth the following facts :-

- a) The institute could purchase any goods from a registered as well as an unregistered dealer provided the goods purchased are used for the purpose of the said institution and/or for use in the manufacture of goods for sale by the said institution.
- b) The institute could effect sales and such sales would not attract tax.

Thus, what gathers from the above is that the liability of the applicant was protected both on the purchase side as well as the sale side under the Bombay Sales Tax Act, 1959.

The applicant never raised the issue under the Bombay Sales Tax Act, 1959 as to whether he is excluded from the definition of dealer, as an educational institution, as provided by the Exception II to the definition of the dealer.

UNDER THE MVAT ACT, 2002

07. The definition of dealer under this Act has been widened to include within its fold "a public charitable trust". The Exception II to the definition of dealer is the same as prevailing under the B.S.T. Act, 1959 and the same seeks to exclude an educational institution carrying on the activity of manufacturing, buying or selling goods, in the performance of its functions for achieving its objects. Thus even if an educational institution is a Public Charitable Trust, it shall not be deemed to be a dealer if it carries on activities of sales and purchases of goods in the performance of its functions to achieve its objects.

As per (iv-a) of Explanation to sub-section (8) of Section 2 of the Maharashtra Value Added Tax Act, 2002, Public Charitable Trusts are deemed dealers. The Explanation provides that carrying on the business activity as per Section 2(4) of the Maharashtra Value Added Tax Act, 2002 is not a prerequisite for the various deeming fictions to become a dealer under the Act. In view of the above changed position under the Maharashtra Value Added Tax Act, 2002, the initial argument of the applicant that its activity, not being in the nature of business, it is not liable to become a dealer under the Act, has no force and therefore is not accepted.

08. Herein now comes the second question as posed by the applicant which seeks to ascertain whether

The Exception II to the Section 2(8) is reproduced below:-

"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."

Hence, in order to get covered by the scope of this exception, the applicant must qualify the following 2 conditions simultaneously,

- a) It should be an education institution ; &
- b) It's activity of manufacturing, buying & selling of goods must be in the performance of its functions for achieving its objects.

Hence, first it is to be ascertained whether the applicant is an educational institution or not.

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) 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.

Therefore, it is necessary to see, whether the applicant holds a valid recognition as an educational institution from any Board/University and it is affiliated to any Board/University. The applicant has produced evidence thereof before me. The applicant is recognized by the Maharashtra State Board of Vocational Examination. Thus, the applicant has approval of being an educational institution from the Maharashtra Government. The institute has prescribed a syllabus for the alumni and has a teaching staff on the payroll. They conduct the exams as per prescribed rules and also issue certificates .

This evidence 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 as to whether the activities of sale and purchase of the applicant are in pursuance of the performance of functions for achieving its objects. A look at the annexure [EXHIBIT A] attached to this order would be useful. It lists out the various courses offered by the institute, items purchased for teaching these courses, items sold by the institute and the list of buyers.

The institute imparts vocational training to the blind students enrolled in the institute in various courses, such as brush making, file making, tailoring, wood work, light engineering and assembly work, lathe machine operation, motor armature winding course, English/Marathi stenography course, telephone operator course, computer skills, etc. For imparting training on these courses, the items as listed out in the EXHIBIT A are required to be purchased. Now this activity of purchases seems to me in keeping with the object of the institute as regards imparting training to the adult blind.

Now there are some courses which teach manufacturing of certain items, such as brushes, folders, file

brush, file, the set screw, and other vendors of paper, notebook, metal parts of frame stand, hanging, printing carrier and many other products. There is also a course on assembly work, tube light patti fixture. Whenever any technical institute imparts training in any skill, then certain goods are bound to be manufactured, i.e., whenever it is taught how to make a brush, the result of training imparted would obviously be in the form of a finished product, i.e., the brush, which is taught to be made to the students. As a part of training, the institute also takes orders for making various items relevant to above trades. All of these items are sold by the institute.

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 activity of manufacturing, buying, selling or supplying goods, is in the performance of their functions for achieving the objects.

We could have a look at the figures from the Income & Expenditure accounts:-
(figures in Rs.)

INCOME	2002-03	2003-04	2004-05
A] Total In	15610294.00	16646721.88	15807538.50
B] Receipts From Other Sources:			
1. Brush	268085.00	272020.00	261818.75
2. Wood Work	61436.00	104985.00	37290.00
3. Light Engineering	283564.00	392053.00	273156.00
4. Tailoring	239527.00	204487.00	44727.00
5. File Board	249247.00	884340.50	278877.80
6. Motor & Coil Winding	92400.00	54070.00	59100.00
C] Other Receipts			
1. Hall Fees	278403.00	313057.00	260250.00
2. Hoardings	8306300.00	8055620.00	7225685.00
3. Miscellaneous Receipts	64433.00	79373.50	71062.00
4. Recoveries From NAB for Maintenance	34062.00	28932.00	32824.00
5. Surplus on Sale of Vehicle	--	--	101824.00
6. Insurance claim	--	7000.00	--
7. Profit on repurchase of Units of Master Gain	214298.00	--	--

The Income & Expenditure accounts submitted by the applicant show that the applicant has mainly effected sales of various items such as brushes, file folders, dusters, chapatti rollers, etc. The details of items purchased and sold by the institute are mentioned in Exhibit-A. These items are made by the trainees while imbibing the skills for the particular course. The items prepared by the students are mainly purchased by various corporates for their

dignity. The institution is not carrying on these activities as an independent commercial activity. A look at the income and expenditure account of the applicant for the year 2004-05 reveals that the total income of the institution is Rs. 1,58,07,538/-. As against the above income, the income from the sale of items prepared by the trainees is merely Rs. 9,54,969/-. This fact leads me to arrive at a conclusion that the sales and purchases of goods of the institution are in the performance of their functions for achieving the objects and thus, I hold that the applicant is fully covered by the scope of Exception-II to the definition of dealer. The applicant thus gets excluded from the ambit of taxation to the extent of sales and purchases of the items which are in performance of their function. It is, however, observed that during the Financial Year 2004-2005, the applicant received a substantial amount of Rs. 72,25,685/- towards a lease rental for hoardings. It is clarified that, all those activities other than the ones which are not in the performance for achieving the objects of the institution would not be covered by the exception clause and to that extent, the applicant is liable to pay the taxes under the provisions of the Act.

CONCLUSION

09. In the light of the discussion held hereinabove, I am of the opinion that, the applicant, THE NAB WORKSHOP FOR THE BLIND, is an educational institution as per Exception-II to the definition of dealer. The applicant, therefore, is not a dealer in respect of its activity of sale and purchase of goods. The sales are in the performance of functions for achieving the objects of the institution. The sales and purchases of goods other than the above mentioned, which are not in the performance of the functions of the institute are liable to tax and to that extent, the applicant will continue to be a dealer under the Maharashtra Value Added Tax Act, 2002 for the reasons explained in para 7 of this order.

10. In view of the deliberations held herein above, I pass an order as follows :-

ORDER

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

No.DDQ-10/2005/Adm-5/89/B-02

Mumbai,dt. 13.03.2006

The question posed for determination as regards "whether THE NAB WORKSHOP FOR THE BLIND is a deemed dealer for the purposes of the Maharashtra Value Added Tax Act, 2002 is herewith answered as "The Exception-II to the definition of dealer would be applicable only to the extent the applicant undertakes activities of manufacturing, buying or selling which are in the performance of functions for achieving the objects".

(B. C. KHATUA)

Commissioner of Sales Tax,

Maharashtra State, Mumbai.