Read:- 1. Application dated 5th October, 2005 from M/s. M.N. Banajee Industrial Home For The Blind.

2. This office letter dated 24th January, 2006 calling the applicant for hearing on 07/02/2006.

Heard:- Shri B. D. Thanawala, Trustee attended on behalf of the applicant.

PROCEEDINGS

(Under section 56 (1) (a) of the Maharashtra Value Added Tax Act, 2002)

No.DDQ-11-2005/Adm-5/82/B-1 Mumbai, dt.02/06/2006

An application is received from M/s. M.N. Banajee Industrial Home For The Blind, Chateau Dieu, 280 S. V. Road, Jogeshwari (West), Mumbai-400 102 for determination of the question as follows :-

"Whether the institute is an educational institute to which Exception-II to the section 2(8) of the Maharashtra Value Added Tax Act, 2002 is applicable."

02. DETAILS SUBMITTED ALONGWITH THE APPLICATION

1) Brochure describing the activity of the institute.

2) A copy of the notification dated 22nd September, 1995 under the Bombay Sales Tax Act, 1959.

3) A copy of the Certificate of Registration under the Bombay Public Trust Act, 1950.

4) A copy of the letter from the Commissioner, Handicapped Welfare.

5) A copy of the letter by the Dy. Secretary, Government of India, Ministry of Home Affairs granting registration under the Foreign Contribution (Regulation) Act, 1976.

6) A copy of the notification dated 18th January, 1982 under the Bombay Sales Tax Act,1959.

7) A copy of the certificate from the Income Tax authorities regarding rebate under section 80G.

8) Copy of the Memorandum of Association and Rules and Regulations of The National Associations for the Blind, India.

9) A copy of the letter from NAB, India certifying that the applicant is the activity of the NAB.

10) Syllabus for the following courses:

(a) Light Engineering Section

(b) Tailoring Section.

(c) Phenyl making.

(d) Detergent powder/liquid making.

(e) Computer Training Centre for visually impaired person.

11) Statement showing the following details :

i) Number of trainees on roll as on 01/01/2006.

ii) Salary paid to the trainers and supervisors, hostel staff and administrative staff for the month of December, 2005.

iii) VAT paid from 1^{st} April, 2005 to 31^{st} December, 2005

(a) on raw materials for training

(b) on other items

iv) Expenses on maintenance and upkeep of trainees for the years 2002-03, 2003-04 and 2004-05.

11) Statement showing surplus/deficit for the training of visually impaired persons for the years 2002-03, 2003-04 and 2004-05.

12) Structure of salary/wages to the technical teaching staff.

13) Income & Expenditure Accounts for the following years 2002-03, 2003-04 and 2004-05.

14) A copy of the 49^{th} Annual Report (2004-05) of The M.N. Banajee Industrial Home For The Blind.

03. <u>BACKGROUND OF THE CASE</u>

The National Associations for the Blind instituted an Industrial Home for visually impaired men in the name of Muncherjee Nowrojee Banajee. The Muncherjee Nowrojee Banajee Industrial Home for the Blind started functioning from July, 1956. The M.N. Banajee Industrial Home For The Blind was established with the sole intention of providing education and training to the visually impaired persons. It is an activity of the National Associations for the Blind, India. The applicant is registered under the Bombay Public Trust Act.

OBJECT OF THE TRUST

To establish, provide, run and maintain a Home for imparting Industrial education to the blind with the object of training them in crafts and workmanship to enable them to be self supporting in their life after the training period.

To take such measures as may be necessary or expedient for training the blind or blind welfare workers/staff members of the Home. To secure work at the premises of the Home or outside to train the blind and to do all such other acts and things as may go to promote the above objects of the Home.

To provide facilities for the rehabilitation, recreation, sports, and general welfare of the blind, for the all round development of the trainee.

FREE FACILITIES AND SERVICES

Hostel accommodation with boarding, industrial training, welfare, health care and recreation.

ACTIVITIES

Cane work of chairs, handloom weaving, light engineering, simple tailoring, candle making, agarbatti making, recreational activities, sports and games tournaments, spiritual & cultural activities, music and elocution competitions, festival celebrations, excursion tours, etc.

TRAINING ACTIVITIES

The Home runs a full-fledged Vocational Training and Rehabilitation Centre for the blind. The blind inmates (male) between the ages of 18 and 45 are trained in,-

Ø assembly work

Ø cane work

- candle making
- agarbatti making
- handloom weaving
- light engineering
- tailoring

The Home conducts four-year courses in industrial training for the blind inmates in the training units, which are equipped with machinery and equipments and are manned by the trained staff who are well versed with their standing of many years in the field. Information is given to the trainees through demonstration and direct hands-on experience (non-formal education) under the supervision of experienced and qualified instructors. The courses are a combination of theory and practical work. Blind trainees undergo basic training in each section and learn performing tasks involving industrial skills within 3 to 6 months for which they are paid pocket money to the extent of Rs. 200/- per head per month depending on their attendance.

The trainees get acquainted with various types of industrial work, work in Government establishments, public sector as well as private sector industries, cooperative organizations, individual parties etc. The trainees do manual work, like packaging of cloth dusters, cane work of chairs, handicraft work etc. and work on handlooms, warping and winding equipments and also operate various machines like power-press, drilling machines and sewing machines. They weave duster and towel cloth, do tailoring of linen, duster, etc. and also make industrial components like wire hangers, sheet metal parts. They also make wax candles and agarbatti. The trainees are paid incentive in cash for all the work being done by them.

The Home maintains two prize funds since inception, namely, Cowasjee M. Banajee Prize Fund and Bai Jerbai N. Gobhai Prize Fund. The trainees are encouraged to do maximum amount of work and on merits of their training performance, conduct, regular attendance etc., they are awarded prizes, in cash with certificate/s, every year. The Home prepares them, to be economically independent by securing jobs either in open competitive employment or in self-employment field. Each of the trainees undergoes training in each and every craft.

There are no criteria for the admissions to the above mentioned courses. The Home admits visually handicapped men, irrespective of caste or creed, and trains them for 4 years in the different sections which have been set up. The objective of the training is to develop the blind and to prepare them to be economically independent. Training is also given in the fields of instrumental music and handicraft work.

The Home also has a Low Vision Centre which provides free eye testing facilities and optical aids to various persons. The second unit of the NAB, viz, The Kantaben Varjivandas Saraiya Low Vision Centre at Worli, is also functioning from the Home.

The Home is also considering the setting up of a hostel in its campus, for the working blind men.

The Home is an aided institution and also recognized by the Commissioner, Handicapped Welfare, as the vocational training centre for visually impaired. The syllabus is designed as per the needs and skills required for the development of the visually impaired people. The syllabus is periodically reviewed as per the demand and latest technological requirement.

The income of the institution is totally exempted from tax under Section 10(23) (c) (iv) of the Income Tax Act, 1961. All donations given to the institution are exempt from income tax under Section 80G of the Income Tax Act, 1961. The institution is also registered under the Foreign Contribution (Regulation) Act, 1976.

04. <u>CONTENTION AND HEARING</u>

The case was fixed for hearing on 07/02/2006. Shri B. D. Thanawala, Trustee attended on behalf of the applicant. It is argued that the Trust is an educational institution, running a school for the blind. He argued that there is no profit motive in the activities of the Trust. Some items are manufactured while imparting training to the blind. However, there is no individual commercial activity.

The applicant provides facilities like free hostel accommodation, food, uniforms, medical aids and other facilities on which it is required to pay VAT tax under the present Maharashtra Value Added Tax Act, 2002. The applicant contends that they have to collect and pay tax (VAT) on each and every item. This is causing great difficulty to the applicant. It is affecting the institute's objective to educate the blind persons and make them self-reliant.

It is contended that the Trust should be considered as an educational institution which is excluded from the purview of the definition of "dealer". The applicant is of the opinion that the institute, being an educational institute, Exception-II to the definition of "dealer" under section 2(8) would be applicable.

05. <u>OBSERVATIONS</u>

I have gone through all the facts of the case.

The Muncherjee Nowrojee Banajee Industrial Home for the Blind gives admission to visually impaired men irrespective of caste, creed and religion, coming from any part of the country and trains them in industrial crafts and further develops them, to become economically independent, all free of charges.

However, these activities are to be interpreted in terms of the provisions of the taxing statute. Hence let me have a look at the relevant provisions under the Maharashtra Value Added Tax Act, 2002

The question before me pertains to, whether the applicant can be regarded as a dealer to whom Exception-II to the definition of "dealer" under section 2(8) would be applicable.

Let me have a look at the treatment to the applicant under the Bombay Sales Tax Act, 1959.

Under the Bombay Sales Tax Act, 1959, the applicant was enjoying the benefits of exemption from the payment of taxes in respect of all sales of products as well as all purchases effected by him subject to fulfillment of certain conditions as prescribed in the notification granting such exemption.

Also under the Bombay Sales Tax Act, 1959, the definition of dealer did not include in its ambit, a Public Charitable Trusts as a deemed dealer.

UNDER THE MVAT ACT, 2002

06. The definition of dealer under this Act has been widened to include within its fold "a public charitable trust".

The said section is reproduced as under:

Section 2(8)	*"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)* ..... *(b)* ..... *(c)* ..... *(d)* .....
	<u>Explanation</u> – 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)* ……… *(ii)* ……….. *(iii)* ………. *(iv)* ………. *(iv-a) Public Charitable Trust;* *(v) to (x)* …………….
	<u>*Exception-II*</u> *-- 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.*

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 include under its ambit a "Public Charitable Trust". 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. It is specifically provided in the explanation to the definition of 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.

What is understood by the the Exception II to the definition of dealer is that 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.

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.

Now, the Act having included a Public Charitable Trust as a deemed dealer, the applicant being a Public Charitable Trust becomes a deemed dealer for the purposes of the Maharashtra Value Added Tax Act, 2002.

Herein now comes the second question as posed by the applicant which seeks to ascertain whether Exception II to the definition of dealer is applicable to him. The Exception II to the Section 2(8) has been reproduced above.

In order to get covered by the scope of this exception, the applicant must qualify the following two conditions simultaneously,

a) It should be an education institution ; **&**

b) Its 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) recognition as an Educational institution by an University or the UGC, or as the case may be, by a technical or educational board;

2) having prescribed courses or syllabus for the alumni;

3) having a teaching staff which is on the payroll of the college or institution;

4) issuing of certificates to its alumni; and

5) conducting of 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 answer to this is in the affirmative. The applicant has produced evidence thereof before me. The applicant has approval of being an educational institution. The institution has prescribed a syllabus for the students and has a teaching staff on the payroll. The students of the institution are appearing for the examinations. The applicant does possess recognition from the Social Welfare Department under the provisions of the Handicapped Person Act, 1995. It has been certified as a Residential Activity School for the blind. The applicant is recognized as a social welfare institution working in the field of handicapped welfare. The Commissioner, Handicapped Welfare, regulates the activities of the institute in terms of grants, number of students eligible for admission to the courses carried at the institute, etc. The applicant institution fulfills the conditions of an educational institution having valid recognition.

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 applicant institution are in performance of functions for achieving the objects of applicant institution ? 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 applicant has furnished the Annual Report and Accounts for the years 2003-04, 04-05, 05-06. The figures mentioned therein would throw light on the activities carried out at the institution. Hence, let us have a look at the following figures from the Income & Expenditure Accounts :-

(A) INOCOME & EXPENDITURE **(Figures in Rs.)**

Particulars	2002-03	2003-04	2004-05
Total income	6736939.66	7889244.61	10243456.22
Total Expenditure	7237717.37	7798999.40	11743862.78

(B) INCOME FROM OTHER SOURCES **(Figures in Rs.)**

Particulars	2002-03	2003-04	2004-05
FROM SALES			
Agriculture	4506.00	8305.50	4768.00
Candles	--	--	9412.00
Miscellaneous	2632.00	58516.50	107481.50
Canework & Carpentry	27944.50	34875.00	38000.50
Light Engineering	248029.00	250440.50	263024.50
Tailoring	233130.80	206095.00	249286.00
Weaving	1103966.20	1270850.75	793253.50
Total	1620208.50	1829083.25	1465226.00

(C) EXPENDITURE ON RELIEF AND REHABILITATION OF THE BLIND

[EXPENDITURE ON THE OBJECTS OF THE TRUST (Figures in Rs.)

Particulars	2002-03	2003-04	2004-05
INDUSTRIAL			
Candle making Expenses	1162.50	2110.00	14736.00
Canework Expenses	8118.50	5434.00	6010.00
Agarbatti Expenses	--	--	1564.00
Carpentry Expenses	--	--	390.00
Cane Work-Raw Material	2909.50	7094.00	12615.50
Light Engineering Expenses	13238.50	14987.00	98454.95
Light Engineering-Raw Material	178230.63	171808.97	193814.10
Pocket Money to inmates	221988.00	225260.00	221165.00
Tailoring Expenses	23692.00	16240.75	39967.47
Tailoring-Raw material	148785.61	165855.44	181052.82
Weaving Expenses	30183.50	25015.50	27986.50
Weaving-Raw material	684494.99	700925.52	741422.15
Total	1312803.73	1334731.18	1539178.49

The above tables confirm the applicant's contention as regards the nature of the activities carried at the Institute.

The institute imparts vocational training to the blind students enrolled in the institute in various courses, such as assembly work, cane work, candle making, agarbatti making, handloom weaving, light engineering, tailoring, etc. For imparting training on these courses, various items 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 blind.

Now there are some courses which teach manufacturing of certain items. There is also a course on assembly work, tube light engineering, etc. 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 agarbatti, the result of training imparted would obviously be in the form of a finished product, i.e., the agarbatti, which is taught to be made to the students. All of these items are sold by the institute.

The Income & Expenditure accounts submitted by the applicant show that the applicant has effected sales of the various items produced while imparting training. The details of items purchased and sold by the institute are mentioned in the accounts. These items are made by the trainees while imbibing the skills for the particular course.

It is now settled that the institute is an educational institution and hence, the benefits of Exception-II to the definition of dealer can be made applicable to the applicant.

The above discussion could be summarized to mean the following:

1. The applicant is a Public Charitable Trust.
2. The applicant can be termed as an educational institution for having fulfilled the criteria of an educational institution.
3. The activities of the applicant are of educational nature.
4. The activities of the institute are in the performance of functions for achieving the objects.
5. The applicant being an educational institution is covered under the Exception II to the definition of dealer.
6. In view of (2) as at above, the applicant cannot be regarded as a deemed dealer for the purposes of the Maharashtra Value Added Tax Act, 2002.

The applicant has mentioned in his application that he is collecting and paying taxes under the Maharashtra Value Added Tax Act, 2002. The applicant has collected taxes on the transactions effected by him. The same would be liable for forfeiture.

In view of the discussion held hereinabove, I pass an order as follows :-

ORDER

(Under section 56 (1) (a) of the Maharashtra Value Added Tax Act, 2002)

No.DDQ-11-2005/Adm-5/82/B-01 Mumbai,dt.02.06.2006

The question posed for determination as regards, "whether the institute is an educational institute to which Exception-II to the section 2(8) of the Maharashtra Value Added Tax Act, 2002 is applicable", for reasons discussed as above, is herewith answered in the affirmative. The applicant is not a dealer as per the provisions of the Maharashtra Value Added Tax Act, 2002.

(V. N. MORE)

Commissioner of Sales Tax,

Maharashtra State, Mumbai.