

- Read : 1. Applications under Section 56 of the Maharashtra Value Added Tax Act, 2002 from M/s. Ramakrishna Math, dated 5th July, 2005 and M/S. Chitshakti Trust dated 6th July, 2005.
2. Letters dated 16th November, 2005 calling the applicants on 22-11-2005 for hearing.

Heard : Shri. P. V. Surte, Advocate attended on 22-11-2005 in both the cases.

ORDER

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

No. DDQ-11-2005/Adm-5/53/B- 02

Mumbai, dt. 20.01.2006

Applications are received from M/s. Ramakrishna Math of 131/18, Dandekar Bridge, Pune-411030, a Public Charitable Trust, and M/s. Chitshakti Trust, C/o. at Gurudev Siddha Peeth, Ganeshpuri, Dist. Thane, Maharashtra, 401206, (hereinafter referred to as "the applicants") seeking determination of the following question :

"Whether the applicants, Public Charitable Trusts, are dealers within the meaning of Section 2(8) read with Explanation 4A of the Maharashtra Value Added Tax Act, 2002?"

The issue being identical to both the cases, it is proposed to pass a single order deciding the issue involved.

BACKGROUND OF BOTH THE CASES :

[I] M/S. RAMAKRISHNA MATH OF PUNE [APPLICANT NO. 1]:

02. M/s. Ramakrishna Math is a Public Charitable Trust and a branch of the Head Office situated at Belur Math, District-Howrah, West Bengal. It is established in the year 1984 in Pune.

Swami Vivekanand, Swami Brahmanand & Others, had executed a Trust Deed which was registered at Calcutta on 6-11-1901 in respect of a plot of land situated at Belur. The management of the same was entrusted with trustees to look after the property, temples, buildings and guest houses for accommodation of the sanyasis and religious devotees. This plot of land was known as Ramakrishna Math, Belur.

AIMS AND OBJECTIVES OF RAMKRISHNA MATH :

The basic object of the trust is to spread the message of Shri Ramakrishna and to strive for elevation of mankind. In order to achieve these objectives, the math undertakes the following activities :-

ACTIVITIES OF THE TRUST :

03. From the brochures submitted by the applicant, an opinion about M/s. Ramakrishna Math could be thus formed :-

- a) Ramakrishna Math, Pune follows the Ramakrishna Order of *"For the emancipation of one's self and the good of the universe"*. Its object is to make an effort to establish brotherly feelings in the followers of different religions.
- b) The Math organizes a series of Discourses and Recitations on various topics.
- c) The Math sales books relating to Ramakrishna, Vivekananda and Vedanta literatures which are published in Hindi, Marathi and English languages. The Trust organize sale of spiritual books, cassettes and CD's on spiritual topics and devotional songs, photographs and laminated posters.
- d) It has a full fledged library of books on spiritual topics, science and technology, psychology, cassette library.
- e) The Math has a Computer Training Centre which imparts training to youth in computer applications such as M.S. Office, C & C ++ programming, DTP, Accounting, Visual basic, Oracle, Auto Cad, JAVA, Web2 Design, MS CIT. There are also special computer training sessions for senior citizens. The Trust also has a "Swami Vivekananda Balak Seva Sangh" whose aim is to build character and impart value education to children from the neglected and weaker sections of the society. The programmes under this sangh are such as special coaching classes in academics, introducing Indian culture through vedic chanting and bhajans, educating about cleanliness and hygiene, providing education and sports material, supplementary nourishing food such as milk, sprouted grams, etc. periodic stick shows covering educational topics.
- f) There is also a "Swami Vivekanand Yuak Sangh" where after Xth Class, children of Balak Seva Sangh enter the Yuvak Sangh. This Sangh organizes activities such as career guidance, value orientation and the youth participation in the service activities of the Math.
- g) The Ramakrishna Math, Pune started a Medical Unit right at the year of its inception, i.e., in 1984 named Ramakrishna Math Polyclinic and Diagnostic Centre. The Math charges a nominal fee for medical examination and treatment. The needy patients are treated free of cost. Medical camps are organized by this unit which accords uniform treatment to all. The full fledged polyclinic

Diagnostic Centre provides low cost diagnostic services, medical treatment at affordable cost. It renders social service to the poor and needy as it is one of its prime objects. The Polyclinic and Diagnostic Centre has modern diagnostic equipment, computerized administrative set up and is supported by a qualified and dedicated team of 47 doctors.

- h) Various medical camps such as blood donation, cancer detection, diabetes, asthma, T.B. awareness, bone mineral density, children physical check-up, neurology, pulmonary function test, etc are organized by the math.
- i) Various philanthropic activities such as drought relief, distribution of blankets, supplying of water tankers to drought hit areas, etc are organized by the math.
- j) Various educational and cultural activities for school children such as elocution and recitation competition and drawing competition, value orientation camps etc are organized by the math.
- k) For the youth, career guidance, participation in Math activities, etc. are organized.
- l) Even for the spiritual seekers, the Trust organizes lectures on spiritual topics.
- m) There are also guidance workshops for teachers, parents, doctors, college students.

DETAILS SUBMITTED ALONGWITH THE APPLICATION :

- 4. The applicants have submitted the following details alongwith the applications in support of their claim :-
 - 1) Debutter Deed and Declaration of Trust between Swami Vivekananda & Swami Brahmanand & Others
 - 2) Certificate from the Registrar of Assurances, Calcutta.
 - 3) Certification from the Deputy Secretary, Govt. of India, Ministry of Home Affairs.
 - 4) Notification under Income Tax Act, New Delhi, by the Govt. of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes.
 - 5) Certification from the Deputy Secretary (Budget), under the Govt. of India, Ministry of Finance And Company Affairs, Department of Revenue, Central Board of Direct Taxes.

- 6) Letter from the Maharashtra Government, Finance Department, informing the applicant about exemption from payment of sales tax in respect of his purchases of medicines, hospitals and medical equipments, apparatus, instruments and components and parts thereof from a registered dealer, as per the notification issued by Government under Section 41 of Bombay Sales Tax Act, 1959.
- 7) Maharashtra Gazette dated 20th June, 1997.
- 8) Certification from the Director of Income Tax (Exemptions) Calcutta.
- 9) In house communication of M/s. Ramkrishna Math, regarding Gujarat Earthquake Relief Fund.
- 10) Brochure on Ramkrishna Math Poly Clinic & Diagnostic Centre.
- 11) Annual Report of M/s Ramakrishna Math,Pune for the year 2004-05.
- 12) Brochure describing the various activities at Ramakrishna Math, Pune.

The above various philanthropic activities are carried out of funds received by way of donations and funds raised by sale of books and other articles.

QUERY :

05. In the above background, the applicant has posed a query as to whether they are liable for registration as a dealer as per Section 2(8) of the Maharashtra Value Added Tax Act,2002. In the earlier Bombay Sales Tax Act,1959, they were not held to be a dealer since their activity is not treated as business. The issue is decided by the Tribunal in their own case in Appeal No. 107 of 1990. The Government also has granted exemption under section 41 of the Bombay Sales Tax Act, 1959 in respect of sales of medicines and medical equipments by other registered dealers to the Math.

ARGUMENT OF THE DEALER :

06. In the above background, the applicant has argued that they are not a dealer as per provisions of Section 2(8) of the Maharashtra Value Added Tax Act,2002. In support of their argument a strong reliance is placed on the Supreme Court Judgment in the case of M/s. Sai Publication Fund (126 STC 228).

The argument of the learned advocate is twofold. It is his argument that since the main activity is not in the nature of business, then any transaction incidental or ancillary would also not amount to business. He relied upon the Supreme Court Judgment in the case of M/s. Sai Publication Fund (126 STC 288) wherein the Supreme

Court has observed that if the main activity is not business, any transaction incidental or ancillary would normally not amount to business unless an independent intention to carry on business in the incidental or ancillary activity is established. According to him, since the activity of the applicant cannot be treated as a business activity as the same is not in the nature of trade, commerce, manufacture or adventure in the nature of trade, commerce, etc. It is alternatively argued that, in case it is held to be a dealer, since the trust is also involved in the educational activity, it gets excluded from the ambit of the definition of dealer by virtue of Exception-II. It is further argued that if his contention is not accepted, then the determination order may be given a prospective effect.

[II] M/S. CHITSHAKTI TRUST [APPLICANT NO. 2] :

Chitshakti Trust is a Public Charitable Trust having its registered office at Chennai and having activities in Maharashtra at its branch at Gurudev Siddha Peeth, Ganeshpuri, Dist. Thane, Maharashtra, 401206. The applicant is registered as a Charitable Trust under section 12A(a) of the Income Tax Act, 1961 and donations to the Trust are eligible for tax rebate under section 80G of the Income Tax Act, 1961. The applicant's main activity is education and dissemination of knowledge by printing, publishing and distributing the philosophical and spiritual yoga teachings of Bhagawan Nityananda, Swami Muktananda and Gurumayi Chidvilasananda and other great sages and saints.

With a view to achieve these objects the applicant's subsidiary activity is to sell the goods such as books, audio cassettes, CD's, Video cassettes, VCD's, photos, meditation asanas, bhasma, kumkum, meditation cushions, dhoop, incense, incense holders, Hatha yoga belts, Japa malas, Japa rings, meditation oils [perfumes], musical instruments such as tabla, harmonium, mridanga, santoor, pooja cloths, meditation shawls, pendants, greeting cards, calendars and carry bags.

AIMS AND OBJECTS OF THE CHITSHAKTI TRUST :

07. Some of the objects and aims could be reproduced thus :

- a) To disseminate the teachings and philosophy of Bhagawan Nityananda, Swami Muktananda and Gurumayi Chidvilasananda, and of other sages and Saints.
- b) To impart education and conduct research work in Siddha Yoga and all other branches of Yoga, and other related faculties of learning, and for these purposes to establish and conduct Siddha Yoga institutions and Centres.

- c) To print , publish and distribute, through literature and other diverse means and media, including but not limited to audio and video recordings and sadhana support items and materials, the philosophy of spiritual teachings and principles of truth as revealed by Bhagawan Nityananda, Swami Muktananda and Gurumayi Chidvilasananda, her successors, if any, and of their subsequent successors in this lineage of Siddha Yoga Gurus, and of other great sages and saints.
- d) To make or obtain and distribute amongst the people at large other traditional articles or products required or helpful for spiritual practices, yoga and indological Studies and other studies,etc., including asanas, statutes, photos, japa rings, japa malas, dhoop, incense, and the like.
- e) To guide yoga students and spiritual aspirants in obtaining their liberation, self-realization and fulfillment, irrespective of caste, creed, colour, religion, sex, community and nationality.
- f) To carry on educational work amongst the public and to guide them to lead a better way of life and living through the practice of Siddha Yoga Meditation.
- g) To impart and promote education and research in arts, sciences, technical and vocational courses, industry, commerce, technology and in any other subject or subjects which the Trustees may decide, and for that purpose, to grant aid, financial or otherwise, and/or to establish and conduct, classes, schools, colleges, laboratories, libraries, reading rooms etc., either alone or in co-operation with any other body, person, or institution.
- h) To support the preservation, promotion and dissemination of indological knowledge, philosophy, culture, traditions, and heritage and for that purpose, to support and sponsor research and study.
- i) To give scholarships, funds, and other forms of support to under privileged and deserving students for their education and to establish for them appropriate residential facilities including hostels and boarding houses.
- j) To provide all necessary facilities and support, financial or otherwise, to Siddha Yoga Students and other spiritual aspirants.
- k) To sponsor and support the well being of the community by undertaking various programmes such as conservation and retention of natural water resources, bio-technological research, agricultural and horticultural research,

supporting traditional and rural way of life, supporting cottage industries, etc.

- l) To establish and maintain branches and centres of the Trust throughout India and in Sri Lanka, Bhutan, and Nepal.
- m) To sponsor charitable activities and programmes, to make donations and grant aid(financial or otherwise),to other trusts, societies, etc having aims and objects wholly or in part similar to any of those of the trust.
- n) To do all acts and things as may be necessary to maintain the dignity and decorum of the Siddha Yoga teachings, the Worldwide Siddha Yoga Mission and the Spiritual Head.

DETAILS SUBMITTED ALONGWITH THE APPLICATION :

- 1) Annexure-A containing aims and objects of Chitshakti Trust.
- 2) Deed of Amendment executed on 21st October, 2004.
- 3) Certification by the Director of Income Tax (Exemptions) Madras dt. 1-2-1996.
- 4) Certification from the Director of Income Tax (Exemptions) Chennai, dt. 11-10-2002

CONTENTION OF THE APPLICANT :

08. The contentions of the applicants are as follows :-

It is the contention of the applicant that the trust is not a dealer because the primary and dominant object and activities of the trust are to educate by spreading the philosophy and spiritual teachings of great masters and sages and not the business of buying, selling and supplying goods. The applicant submits that the trust is not carrying on business in selling goods and is not a dealer and that it is very clear from the object of the trust that it has been established with a view to spread education and the philosophy of spiritual teachings of great masters and saints of India. The applicant has stressed the judgments in the following cases in support of his view:-

- a) The Supreme Court decision in the matter of The Commissioner of Sales Tax V/s. Sai Publication Fund [126 STC 228].
- b) M/s. Ramakrishna Math V/s. The State of Maharashtra decided by the Sales Tax Tribunal, Mumbai [App. 107 of 1990].
- c) DDQ dated 2-12-1994 in the case of M/s. National Safety Council.
- d) DDQ dt. 30-7-1996 in the case of M/s. Pune Institute of Neurology.

- e) DDQ dt. 15-8-1996 in the cases of M/s. Rishi Vachan Trust and The Sadhana Foundation, Pune.

The applicant feel that the decisions given in all the above cases are clearly applicable to the Trust. In the alternative the applicant also presses that if his contention is not accepted, then the determination order may be given prospective effect.

TREATMENT UNDER THE B.S.T. ACT, 1959 :

09. Both the applicants were never held to be a dealer carrying on the business within the meaning of Section 2(11) of the Bombay Sales Tax Act, 1959.

The definition of “dealer” as per Section 2(11) of the Bombay Sales Tax Act, 1959 clearly indicated that in order to hold a person to be a “dealer”, he must carry on business as defined in Section 2(5A) of Bombay Sales Tax Act, 1959 and then only he may also be deemed to be carrying on business in respect of transactions incidental or ancillary thereto. The liability to pay sales tax under Section 3 of the Bombay Sales Tax Act, 1959 is only on dealers. As per definition of “business” under Section 2(5-A) of the Bombay Sales Tax Act, 1959, if the main activity is not business, then any transaction incidental or ancillary would not normally amounts to business unless an independent intention to carry on business in the incidental or ancillary activity is established.

Due to the above facts, both the applicants were not considered as dealers carrying on business under the Bombay Sales Tax Act, 1959.

OBSERVATION :

10. I have gone through the applications and the arguments placed before me. Let me look at the treatment given to the dealer under the Bombay Sales Tax Act, 1959 and the Maharashtra Value Added Tax Act, 2002.

The issue as regards the applicants – are Charitable Trusts not being dealers carrying on business is settled under the Bombay Sales Tax Act, 1959 by the Supreme Court judgement of Sai Publication Fund. Also, under the Bombay Sales Tax Act, 1959, the definition of “dealer” did not include a Public Charitable Trust. Hence the applicants enjoyed the non-dealer status upto 31-3-2005 under the Bombay Sales Tax Act, 1959. In the case of Ramkrishna Math, the Tribunal has given a judgment in their own case, and held that the activity of the math is not in the nature of business and hence they cannot be treated as a 'dealer' as per the Section 2(11) of Bombay Sales Tax Act, 1959.

The definition of “dealer” under this Act has been widened to include in its ambit “a Public Charitable Trust” as a deemed dealer.

This inclusion would mean that a Public Charitable Trust would be deemed as a dealer for its various activities and their activities would be deemed to be business activities.

By virtue of the inclusion of a Public Charitable Trust as a deemed dealer in the definition of “dealer” under the Maharashtra Value Added Tax Act, 2002, M/s. Ramakrishna Math and M/s Chitshakti Trust would be dealers for the purpose of the said Act.

A heavy reliance is placed by the applicants on the Supreme Court judgment in the case of M/s. Sai Publication Fund (cited supra). It is to be seen that the said judgment is based upon the provisions of Bombay Sales Tax Act, 1959 and definition of 'dealer' as per Section 2(11) of the Bombay Sales Tax Act, 1959. The Supreme Court, on interpretation of the definition of 'business' and 'dealer' of the Bombay Sales Tax Act, 1959, came to the conclusion that, as per the provisions of definition of 'dealer' as per Bombay Sales Tax Act, 1959 unless a person carries on the business as per the meaning of term 'business' in Section 2(5A) of Bombay Sales Tax Act, 1959, a person cannot become a dealer. The Supreme Court thus observed that the main activity of the applicant is to spread message of Sai Baba which cannot be termed as an activity of business as per Section 2(5) of the Bombay Sales Tax Act, 1959. The Court further observed that if the main activity is not business, any transaction incidental or ancillary would not normally amount to business unless an independent intention to carry on business in the incidental or ancillary activity is established.

The provisions of taxation of Public Charitable Trusts are different in Maharashtra Value Added Tax Act, 2002 as compared to the Bombay Sales Tax Act, 1959. Under the Maharashtra Value Added Tax Act, 2002, as per Section 2(8)(iv-a), the public charitable trusts are included as deemed dealers. Such inclusion was not present in the category of deemed dealer under the Bombay Sales Tax Act, 1959. The explanation to the definition of dealer is thus read as **“for the purposes of this clause, each of 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 in other provisions of this Act, be deemed to be a dealer, namely -**

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(vi-a)- public charitable trust”.

By virtue of the above inclusion, the ratio of the Supreme Court judgment of Sai Publication Fund, becomes infructuous in the applicants' case, in the context of the MVAT Act. The explanation to the definition of dealer, clearly mentions that, notwithstanding anything contained in Clause (4), i.e. the definition of business, the certain bodies including the public charitable trusts are deemed to be dealers. Once a legal fiction is created, the law assumes the fiction to take all the requisites of the deeming provisions. As such the requirement of a dealer to carry on the activity of business gets fulfilled, once a deeming fiction is created. The Hon. Supreme Court in the case of Commissioner of Income Tax Vs. S. Tejasingh (35 ITR 408), observed that “it is a rule of interpretation well settled that in construing the scope of legal fiction, it would be proper, even necessary to assume all these facts on which alone can fiction operate”. Thus, the Court in an unequivocal term stated that in order to operate legal fiction, the fiction assumes the necessary act to make it operational. The question whether the activity of the applicant is in the nature of trade or business or is or is nor its main activity does not arise once the deeming fiction is created.

In view of this clear provision of law, the reliance on the judgment of Sai Publication Fund, is not much helpful to the applicants, as the judgment of Sai Publication was based on the provisions of Bombay Sales Tax Act, 1959, wherein the Public Charitable Trusts were not in the category of deemed dealer. The applicants do not succeed on this ground.

Alternatively, it is argued that, by virtue of exception to the definition of 'dealer', they get exempted being an educational institution. The Exception-II reads as under.

“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.”

It is to be noted that the legislation has extended the benefit only to the educational institutions and not to the bodies spreading education. No doubt, the applicants are spreading the education among the masses, but still they cannot be termed as educational institutions.

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

- 1) recognized as Educational Institutions by University or UGC, or as the case may be, by technical or education 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.
- 5) Conducting tests/exams as per prescribed rules.

Both the applicants do not satisfy the above criteria and hence can not be termed as an educational institutions.

JUGDMENTS/ CITATIONS :

12.. Let us take a look at the judgments cited by the applicants and assess their applicability to the present situation. The applicants cited the following judgments :-

- (1) Commissioner of Sales Tax V/s.M/s. Sai Publication Fund [126 STC 228 (SC)].
- (2) M/s. Ramkrishna Math, Bombay Vs. The State of Maharashtra [Appeal No. 107 of 1990 decided on 31-3-1994].
- (3) Determination Order dated 30-7-1996 in the case of M/s. Pune Institute of Neurology.
- (4) Determination Order dated 15-8-1996 in the case of M/s. Rishi Vachan Trust, Vile Parle and M/s. Sadhana Foundation, Pune.
- (5) M/s Seva Sadan v/s The State of Maharashtra (Appeal No. 102 of 2002 decided on 14th January,2005).

In all these cases, the appellant is a Public Charitable Trust. It was held in all the above cases that the activities of the trust are not in the nature of business and hence they are not dealers within the meaning of Section 2(11) of the Bombay Act. This issue is elaborately discussed in the earlier part of my order. All these judgements are not applicable to the cases before me as they are based upon the provisions of Bombay Sales Tax, wherein the Public Charitable Trusts were not dealers unlike under the provisions of the MVAT Act, 2002.

(6) Determination Order dated 2-12-1994 in the case of M/s National Safety Council:

The applicant is registered as a Public Charitable Trust. To meet its objectives of educating personnel in industry and the general public and promoting safety awareness, the council organizes national and international conferences, seminars and training courses on various current and important aspects on the subject. The applicant is also publishing safety manuals, instructions, cards, pamphlets, booklets as well as safety calendars, posters and stickers with safety messages. Activity of selling educational and promotional literature and materials like safety calendars, pamphlets, posters etc. is ancillary to the main objective of educational campaigns. It is held that as per Exception-II to section 2(11) of the Bombay Sales Tax Act, 1959, he cannot be treated as a dealer.

In order to get covered under this exception the applicant must follow two conditions namely, it should be an educational institution and their sales and purchases must be in performance to achieve their objects.

The National Safety Council is solely established for imparting educational training to the workers. It can be seen that its sales and purchases of goods are in the performance of its functions to achieve its objects and hence are not treated as a dealer. Such is not the case of the applicants.

CONCLUSION :

13. The Supreme Court Judgment in the case of M/s. Sai Publication Fund as well as other determination orders cited would not be applicable to the applicants as Public Charitable Trusts are specifically included in the definition of dealer under the MVAT Act, 2002 through a deeming provision. Since the applicants do not fulfill the criteria of an educational institution they are not excluded by the Exception II to the definition of dealer.

In view of the deliberations mentioned hereinabove, I am of the opinion that the applicants M/s. Ramkrishna Math and M/s. Chitshakti Trust, both Public Charitable Trusts are deemed to be dealers as per Section 2(8) of the Maharashtra Value Added Tax

Act, 2002 and the benefit of Explanation-II to the said Section 2(8) cannot be made applicable to them as the said trusts are not educational institutions as are commonly known to be recognized.

It is alternatively argued to give the prospective effect to the determination order. Both the applicants were not registered under Bombay Sales Tax Act, 1959. In the case of Ramkrishna Math, the Tribunal has given a judgment in their own case that they are not dealer for the purposes of the Bombay Sales Tax Act, 1959. The Supreme Court in the case of Sai Publication Fund has confirmed the position of law. The applicant has not obtained the registration under the Maharashtra Value Added Tax Act, 2002 and has not collected any taxes on their sales since 1.4.2005 till date. Considering the above position, I find merit in this argument of the advocate and I, therefore, hold that the liability of the two dealers is protected till the date of this determination order as per the powers entrusted to me by Section 56(2) of the Maharashtra Value Added Tax Act, 2002.

ORDER

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

No.DDQ-11-2005/Adm-5/53/54/B- 02

Mumbai, dt . 20.01.2006

The question posed as regards whether the applicants M/s. Ramakrishna Math and M/s. Chitshakti Trust, both Public Charitable Trusts, are dealers within the meaning of Section 2(8) read with Explanation (iv-a) of the MVAT Act, 2002 is hereby answered in the affirmative. The applicants' request as regards prospective effect to the determination order is hereby accepted and I hereby hold that the liability of both the applicants is protected till the date of this order.

(B. C. KHATUA)
Commissioner of Sales Tax,
Maharashtra State, Mumbai.

C:/Kadam/RamkrishnaMath/31.11/1.12/1.12/3.12/22.12