

- Read -**
- 1) Application dated 3/11/2007 by M/s. Mumbai Grahak Panchayat
  - 2) Communication dated 12/1/08, 10/3/08, 21/4/08 & 10/1/09 from the applicant.
  - 3) This office letter dated 26/2/08, 11/3/08, 28/4/08 calling the applicant for hearing.
  - 4) This office letter dt.22.06.2010 calling for clarification on certain aspects.
  - 5) Applicants' submission dt.13.07.2010.

**Heard -** Smt. Nikita Badheka, Advocate and Shri. Shirish Deshpande (Senior Advocate) attended the hearing.

## **PROCEEDINGS**

**(U/s. 56 of the Maharashtra Value Added Tax Act, 2002.)**

No. DDQ 11/2007/Adm-3/54/ B-2

Mumbai, Date:07.12.10

An application is received from M/s. Mumbai Grahak Panchayat, Grahak Bhavan, Sant Dyaneshwar Marg, Behind Cooper Hospital, Vile Parle (W), Mumbai – 400 056, for the determination of questions as follows :

1. Whether the activity of acquiring the goods as per requisitions received from of the members and distributing the same on “No Profit No Loss” basis amounts to sale and purchase in terms of the Maharashtra Value Added Tax Act?
2. Whether the applicant i.e. Mumbai Grahak Panchayat is liable for registration under MVAT Act for the activities of procurement and the distribution of the goods?

**02. Details submitted alongwith the application**

The applicant has submitted the following details.

1. Memorandum of Association and Bye-laws.
2. Innovative Distribution Model Book by Shri Shirish Deshpande.
3. Vitaran Form.

**03. BACKGROUND OF THE CASE**

The applicant is a voluntary consumer organization, registered under Charitable Trusts Act vide Registration No. F/7000 and also registered as Society under No. 417/8/GBBSD. The motto of the applicant is declared as “*Promote and protect the interest of consumer and to create awareness about their rights and duties amongst the public at large.*”

The applicant runs the unique model of distribution system which is run without any share capital. To participate in this system, the members will have to form a group of minimum 11 members & pay Rs. 10/- p.m. or Rs. 120/- p.a. as membership fees. The distribution system became operational in April 1975 in Mumbai. Over a period of 32 years, it has grown from about 28 Buying Groups to 1,574 Buying Groups. The membership has risen from 400 members to 21,632 in the year 2007. At present MGP supplies about 90 items of grocery every month and about 250 different items in a year to its 21,000 families. Its total turnover today is about Rs. 250 million. This distribution system is being operated with the help of 90 paid employees. Each buying group (Grahak sangh) consists of 11 families headed by a Group Leader.

- The distribution system covers a wide range of items such as (1) food grains, (2) pulses, (3) spices, (4) dry fruits, (5) cosmetics, (6) stationery items, (7) soaps and detergent, (8) Hosiery & Garments. The monthly purchase order i.e. indents incorporating these items are prepared by the eleven member families. These indents are consolidated by the group leader and sent to the Central Office of applicant for consolidation.
- Based on the consolidated collective demand, the purchase committee members of the applicant visit the market, select the products, negotiate prices & place orders for different items based on the consolidated demand and prices payable on each & every item is determined and communicated to the buying group and from them it is communicated to the member.
- Then the individual member hands over the payable amount to group leader. The group leader deposits the amount in the bank and hands over the cheque for his group to the Central office.

- The goods selected by the purchase committee (PC) are received by the applicant's warehouse where they are repacked into small consumer pack for eventual distribution to the buying group (Sangh). The group leader of a group (Sangh) receives goods on a pre-determined day when members assemble to collect their respective items.
- The whole system operates as a timetable given in the individual indent (order form) and it is so designed that it eliminates middlemen as items/commodities are purchased directly from producers and/or wholesalers.

The purchase committee is vigilant in ensuring the selection of good quality products at lower prices by 10 to 20% and protects members in respect of weights and measures. The aforesaid activity is stated to be in keeping with the Aims & Objects of the applicant as declared in the Memorandum of Association.

The clause D-1 of the Memorandum of Association of the applicant is as below:-

“To initiate, promote and organize groups of consumers into Grahak Sanghs (Consumer association/groups) and to undertake production, procurement and distribution of goods and services for the benefit of the consumers.”

The applicant incurs various costs such as procurement cost, operational cost & dispatch cost.

### **COSTING OF THE APPLICANT**

- 1) Rates for distribution are normally fixed on the basis of actual expenses for procurement of goods to the doorstep of godown.
- 2) Additional cost of operation includes packing, picking, shacking, loading, unloading and the fixed cost of administration overheads like rent, rates, taxes etc.
- 3) Dispatch cost includes payment to transport contractors to make doorstep delivery.

The applicant has informed that expenditure incurred on total activity is recovered through cost contribution memo based on “No Loss No Profit”. In case total contribution falls short of expenditure then the difference is recovered in the next month and vice versa when contribution is in the excess. So it is contended that no business profit is earned.

Further at the end of every year any excess contribution received from the member is refunded to them by way of giving relief based on their previous procurement.

Besides the distribution system, the applicant is engaged in other activities, which are as follows:

- Any scrap/empty bags arising out of distribution activity are sold and treated as income and same is redistributed to members by giving them credit in their bills.
- Interest earned on the bank account is also distributed to members by giving credit in the bills.
- Grahak Panchayat Peth:- It is organized by the applicant normally before Diwali festival. The applicant hires a hall. They charge rent for hire of stalls from suppliers, 2.5% on total sales by the supplier/stall owner is recovered as administrative charges.
- Vibhagiya Watap:- The group of Grahak Sangh of particular geographical area constitutes Vibhag. The applicant grants Rs.10/- per member for organizing grahak melava (consumer fair) & further Rs.10/- per member for other consumer activities organized by Vibhag Group.
- Vidyarthi Peth:- An independent activity organized by vibhag before the opening of schools every year so members get the stationery & other items at reasonable rate. The income earned out of the activity is utilized for doing consumer activities.

The applicant has informed further that Mumbai Grahak Panchayat (MGP) does not have one activity but multiple activities. Collective buying groups are only one of such multiple activities. Prior to 1/4/2007 the activity of distributing the commodities to its group members was undertaken by Janata Madhyavarti Grahak Sahakari Sangh Maryadit (JMGSSM). JMGSSM was registered under the Co-operative societies Act. This activity of JMGSSM is stopped w.e.f. 1.4.2007 & simultaneously with the approval of the Charity Commissioner, the Mumbai Grahak Panchayat i.e. MGP has started the task of forming the collective buying group & distributing etc. to its own members.

It is informed that, in the audited accounts, there is an account for “miscellaneous receipt” which is on account of sale of scrap like gunny bags, polythene bags. When these sales exceeded the prescribed limit for registration under the MVAT Act, the applicant has applied for registration. There is no other sale by the applicant. The stock of food grains etc. shown in the Balance Sheet is the stock which is under

circulation & purchased as per requisition of the members. There are no purchases shown by Grahak Panchayat. However, an account of the stock is maintained to regulate the activities. The activity of the applicant has 4 distribution circles, named pehla vatap, Doosra Vatap, Teesra Vatap and Chautha Vatap. Therefore at the end of the month there is bound to be some stock purchased but not distributed.

#### **04. CONTENTION & HEARING**

Smt. Nikita Badheka (Advocate) and Shri. Shirish Deshpande (Senior Advocate) attended on behalf of the applicant on 10.6.2008. They contended that Mumbai Grahak Panchayat is not dealer qua the distribution activity as MGP is working on a “collective buying system” which is not an activity of buying and selling. They further contended that, MGP is not a seller due to the specific nature of buying system. MGP has taken registration under the Maharashtra Value Added Tax Act qua sale of scrap.

#### **05. OBSERVATIONS**

I have carefully gone through all the details of the case. The applicant has posed the following questions:

1. Whether the activity of acquiring the goods as per requisition of the members and distributing the same to the members on No Profit No Loss basis amounts to sale and purchase in terms of the MVAT Act?
2. Whether the applicant i.e. Mumbai Grahak Panchayat is liable for registration under the MVAT Act for the activities of procurement and distribution of the goods?

In their letter dt. 13.7.2010, the applicant has admitted that "while assisting the consumer sanghs in collective buying, some scrap is generated at MGP's Godown. Such scrap is sold by MGP and qua this sale of scrap which is the only sales by MGP, they become liable for registration and payment of tax in terms of Sec. 2(8) (expln.) (iv-a)...." Thus, the question whether the applicant is liable for registration under Maharashtra Value Added Tax Act, 2002, needs no consideration, as the applicant is registered under the Maharashtra Value Added Tax Act,2002.

The question, therefore, for my consideration requires to be recast as under:

Whether the activity of the applicant i.e. Mumbai Grahak Panchayat of acquiring the goods as per the requisition of the members and distributing the same to the members on no loss no profit basis amounts to sale within the meaning of Sub-section (24) of Section (2) of the Maharashtra Value Added Tax Act,2002 ?

#### **5.1 ANALYSIS OF DEFINITION:**

In the context of the present case, the applicant's activity as can be seen from the MOA, could reproduced as under.

*“To initiate, promote and organize groups of consumers into Grahak Sanghs (Consumer association/groups) and to undertake Production, Procurement, Distribution and Sales of goods and services for the benefit of the consumers”.*

From the above, it can be seen that Mumbai Grahak Panchayat undertakes various activities such as production, procurement, distribution and sale of goods & services.

There has been change in the MOA & Bye-laws and the word “and sale” is added after the word distribution. The reason for this change is the purpose of the organization to establish outlets for consumers to get goods and services. Thus, the insertion of the word ‘sale’ in the MOA of the applicant proves that there is every intention of the MGP to undertake sale of goods. The activity of the applicant is not limited to only production / procurement / distribution of goods. The insertion of the word may not be a predominant argument against the applicant but it shows, for any purpose, that the MGP intends to undertake sale of goods to its members.

The question before me is whether MGP has effected ‘sale’ of goods to its members? The applicant in his submission has consistently argued that the MGP comprises the members and there cannot be a sale from MGP to its members as MGP itself constitutes its members. In order to deal with this argument let me have a look at the activity of the organization as such..

#### **5.2 ACTIVITY OF MGP - DOES IT FULFILL CRITERIA OF SALE?**

The applicant has informed that there is a unique distribution system of MGP. To participate in this system, the members will have to form a group of minimum 11 members and pay Rs.10/- per month as membership fees. The activity consists of monthly dispatch of essential commodities from a list of

predetermined items, strictly only to members, who place in advance their list. Eleven members submit requisition to their 'Grahak sangh pramukh'. The requisition for goods from members (of the MGP) is collected 15 to 21 days in advance. On receipt of the requisition a cost contribution memo is issued per Sangh. The head of the Sangha submits cheque in advance, and only after the cheque is received, the goods are delivered to the Pramukh. The Pramukh then distributes the goods.

The monthly purchase order i.e. indents incorporating these items are prepared by eleven member families. These indents are the consolidated collective demand. The purchase committee which comprises 13 housewives supported by a purchase manager visit the market, select the products, negotiate prices and place orders for different items based on consolidated demand. Prices payable on each and every item is determined & communicated to buying group and from them it is communicated to the member.

The individual member hands over the payable amount to group leader. The goods selected & placed order for by the Purchase committee is received at the applicant's warehouse, where they are repacked in small consumer packs for distribution. The group leader receives the goods on a pre-determined day when the members assemble to collect their respective item.

### **5.3 The entire process is described by the applicant in the following words.**

"Member's groups' orders are consolidated and acquisitioned from the market through registered dealers or manufacturers. Then rates are negotiated and cost contribution memo is made to recover the procurement cost, operational cost and dispatch cost in advance. These cost contribution memos are sent to the leader of the group of Grahak (called Grahak Sangh) who collects the amount in advance from members. Payment is made to supplier on the stipulated date agreed as per the delivery order.

Member's commitment and dedication towards the payment has never brought MGP disrespect for non payment, or dishonor of any cheque payment made to the supplier.

The entire activity is done through voluntary workers, and paid employees and transport contractors.

This activity is managed with the help of paid employees. Godowns are hired on rent at various places to conduct this activity.

All the above expenses constitute cost which is ultimately recovered from the members.

These expenses are recovered by way of cost contribution memo.

Rates for distribution are normally fixed on the basis of actual expenses for procurement of goods to the doorstep of godowns. Additional cost of operation includes packing, picking, stacking, loading, unloading and the fixed cost of administration overheads like rent, rates and taxes etc. To this, dispatch cost is added wherever it is necessary. Door delivery is made to the doorstep of Grahak Sangh at the places mentioned in their demand list. The goods are distributed among themselves voluntarily which saves extra burden of distribution cost.

Provisional rates are fixed on the basis of projected expenditures to be incurred for total activity and they are recovered through Cost Contribution Memo based on No Profit No Loss. If total contributions do not match with the total expenditure incurred then, the difference of excess or less is done through refund and recovery in the next month. No business profit is earned out of these transactions.

Sometimes due to standard size of Pack extra material is supplied by supplier. Such material is notified in the demand list and as per the normal procedure disposed off to members only on their request and recovery is made through Cost Contribution Memo.

At the end of every year any excess contribution received from the members is refunded to them by way of giving relief based on their previous year's procurement cost".

### **5.4 It is further seen from the literature furnished by the applicant "Case Study 2 : The Mumbai Grahak Panchayat Innovative Distribution Model" that:**

1. The purchase committee members go to far flung places located at distance of a thousand kilometers or even more to get wheat from Madhya Pradesh and Chilli from Karnataka and Andhra Pradesh and Turmeric from Sangli in Maharashtra.
2. These purchases are made immediately after the harvest, when the prices are relatively lower.

3. MGP has also started repackaging the commodities in to small packs as per individual consumers' order. This process of mechanization and simplification gave a boost to productivity and membership increased considerably thereafter.
4. Because of large scale purchases, MGP has been able to influence even the packing of the products. In the case of number of products, it has prevailed upon the producers to do away with fancy packing. Girnar Tea, which has been supplied to MGP members, is in a simple polythene bag compared to the fancy pack available in the open market for the same Girnar Tea. Similarly shampoo bottles which are commonly found in fancy attractive shapes and sizes have been done away with and they are provided in simple bottles for MGP members. As a result, MGP could offer a 500 ml. bottle to its members for Rs. 25 as against a 100 ml fancy commercial shampoo costing Rs. 18. Even for handkerchiefs, the packing has been done away with to reduce the cost.

In Watap Patrika December 2007 at Vastuchi Purak Mahity, it is mentioned that वाटपासाठी आपण गुंटूर व बेडगी ह्या दोन प्रकारच्या मिरच्या विकत घेऊन त्याचे ६५:३५ असे मिश्रण करतो व दळून घेतो.

From the above informative literature it is seen that

1. The MGP purchases goods in bulk and well in advance from various places of India, irrespective of orders.
2. MGP purchases commodities and undertakes processes like grinding, mixing, blending etc.
3. MGP purchases the goods and suitably packs in smaller quantities.
4. MGP purchases the goods of reputed brand and sells it in simple polythene bags to reduce the cost of the product.
5. While distributing the goods to its members, the rates of distribution are normally fixed on the basis of actual expenses for procurement of goods. The additional cost of operation includes packing, picking, stacking, loading, unloading and fixed administrative cost like rent and taxes.

It is seen that the Panchayat is engaged in the business of buying and selling of goods on regular basis as aforementioned. The characteristics of volume, frequency, continuity of transactions of buying and selling of certain class of goods is present in this case. The intention of the applicant to carry on the business is also clear from the aims and object of the MGP which as per bye-laws is to initiate, promote and organize groups of consumers into Grahak sanghas (consumer association/groups) and **to undertake production, procurement and distribution of goods for the benefit of consumer.** .... Thus it seems that the panchayats' aim is to buy and sell goods.

**5.5** In popular parlance, "sale" means transfer of property from one person to another in consideration of price paid or promise or other valuable consideration. 'Price' has been defined in section 2(10) of the Sale of Goods Act as meaning—"the money consideration for a sale of goods" The MGP is obviously selling goods to members of grahak sangha for the reason that it charges price to them.

**5.6** The members of the grahak sanghas place an order for certain goods with the MGP for some consideration and the MGP complies the order and thus it forms an agreement of sale and purchase. In fact, when the goods are sold to the consumer and the consumer purchases under restricted condition, (such as order placement by members in prescribed form, advances, etc), it cannot be said that title did not pass to the consumer. Unless MGP owns the title over the goods, it cannot pass it to the consumer. The price, as is well known, is payable when title passes. Unless MGP becomes the owner of the goods purchased by him, he would not pay the price. Undoubtedly when MGP purchases the goods from wholesalers or harvesters as the case may be, for a price paid or payable and receives the delivery of the goods he holds the title over those goods. Thus MGP satisfies the conditions of sale. It has been contended by the applicant that the Grahak sanghas pay the price in advance but ***this can be the mechanism of payment and it does not take away***

*credence from the fact that price and delivery of goods in this case are concurrent as is the case in normal sale of goods.*

5.7 The MGP has also contended in sum that the MGP works with a motto to educate the consumers, etc, and to purchase or sale products at minimum possible price. This aim of protecting the interests of the consumer would not however mean that a contract would cease to become a sale contract or sale would cease to become a sale. Partly under the impact of social philosophy and partly in an attempt to meet the competitive demands of the community for relatively diminishing supply of scarce materials, the relations between a manufacturer of a commodity and the dealer thereof or between the dealer of a commodity and its consumers are regulated and controlled in various ways. It is not possible to argue that the imposition of control effects any fundamental change in the relationship between these contracting parties. Thus the noble act of the applicant cannot take away from the fact that the transaction between the wholesalers and the MGP and the consumers is not a sale as per the Sale of Goods Act.

#### 5.8 **WHETHER PROFIT MOTIVE PRESENT**

The main contention of the applicant is that the Mumbai Grahak Panchayat is not doing the activity of distribution of the commodity to earn profit. In fact it is contended that the activity is carried out on a “no profit no loss basis” and therefore is not an activity of sale or/and purchase and is thus not business. It is also stated by the applicant that any scraps/empty bags arising out of this operation are sold and they are treated as income and same is redistributed to members by giving credit in their bills. Further that the interest earned on the bank account is also distributed to members by giving credit in their bills.

To have a clear picture of the activity of the applicant a letter was issued to the applicant on dated 22.6.2010 requesting to submit detailed answers to following questions :-

1. Whether the Panchayat is registered under The Societies Registration Act, 1860 or under Maharashtra Co-operative Societies Act, 1960?
2. In the goods purchased by MGP from open market and the goods which are in the possession of MGP; obligations for risk in the goods be explained.
3. Kindly refer to Sattavisava Warshik Ahawal & Hisheb 2007-2008 and please explain the following:-
  - i) The income accounts, from which head amount is transferred to funds account?
  - ii) Whether income over expenditure transferred to Balance Sheet is profit of the business? Please give your detail comments.
  - iii) The Balance Sheet shows Creditors for purchases at Rs. 82,71,775/- and advance from Grahak Sangh is Rs. 6,38,474/- Please explain your contention, in light of this accounts, that Grahak Peth pays price in advance to MGP?
  - iv) In income & expenditure accounts at income side, closing stock of food grains has been shown at Rs. 79,49,657/- Please explain and substantiate whether it is against advance received from Grahak Peth?
  - v) You have contended that, Income on account of Interest, Contribution, Sale of Gunny bags etc are adjusted towards sale price of the members of Grahak Peth; whether the Income shown at the heading Distribution of food grains, spices, edible are net of such adjustment, Please substantiate with evidence.
  - vi) In Budgetary provisions for the year 2008-09 at income head you have estimated Rs. 30 cr. as income from yearly sale; please substantiate with reference to your contention that MGP is not engaged in the business of buying and selling.
  - vii) Your contention that there is no sale between Grahak Panchayat and its members on the principle of mutuality.

The applicant has replied to these questions; however the contention of the applicant is not acceptable for following reasons:

## 5.9 ANALYSIS OF THE ACCOUNTING METHOD

I have perused “Sattavisava Varshik Ahaval wa Hisheb 2007-2008” of MGP brought on the record by the applicant. The Ahaval comprises the Balance Sheet as on 31<sup>st</sup> March, 2008 and Income and Expenditure account for the year 1.4.2007 to 31.3.2008. It is revealed from the Income & Expenditure account that Gross profit in the business seems to be Rs. 43,37,788/- as under:

A) Gross Sales	:	:	Rs. 32, 18, 17,918
B) Gross Purchase	:	30,78,68,369	
Opening Stock	:	NIL	
Closing Stock	:	79,49,657	Rs. 29, 99, 18,712
(Net of gunny bags, etc.)			
C) Transport Godown & Delivery	:	:	Rs. 1, 75, 61,418
Exp. (Carriage inward & Carriage outward is not shown separately)			
D) Gross Profit (A-B-C)	:	:	Rs. 43, 37,788
Thus, i) trading Income over expenditure comes to			Rs.43,37,788/-
ii) other Income from the ahaval has been shown at			Rs.47,03,194/-
(Membership Contribution, Interest from bank, etc.)			
iii) Expenses other than trading expenses are shown at			Rs.76, 52, 179/-
E) Net Income over expenses (i + ii – iii)			Rs.13,88,803/-

The excess of income over expenditure is distributed as under:

Expenses on aims & objects	Rs. 2,99,541/-	
Trafd.to Funds	Rs.10,00,000/-	
Excess Income trfd. to B/L	<u>Rs. 89,262/-</u>	Rs.13,88,803/-

The applicant has not replied to the question as to from which income is the amount transferred to the Fund Account. However, from the above analysis it is very obvious that the amount of Rs. 10,00,000/- has been transferred to Funds account from the excess of income over expenditure which is nothing but the gains from the business of buying and selling. Thus the contention of the applicant that the system operates on “No Loss, No Profit” basis as also that MGP cannot make profit from operation of this system and therefore MGP is not carrying on any business, is not acceptable.

It is also seen that after adjustment of profit to fund, net income over expenditure is transferred to balance sheet and the cumulative income over expenditure accounted up to 31.03.2008 is Rs. 11,15,574/-.

### PROFIT EARNED BY MGP

The applicant has submitted the ‘Issue cost statements’ for the Month of October 2009 and November 09. The Statements of Accounts of the business for this period 2009-10 are not before me and therefore, it would be ideal to compare the statements with the available Statements of Accounts of the business, on a “mathematical percentage basis” as per the table below:

Description	Fig. as per Income & Expenditure A/c for f.y. 2007-08 (Rs.)	Fig. as per ‘issue cost statement’ Oct.2010
Income from distribution	32,18,17,918	2,62,56,912
Purchase Consumed (P.C.)	29,99,18,712	2,42,05,358
Sale over P.C.	2,18,99,206	20,51,554
% of Sale over P.C.	(7.3%)	(8.48%)

Trading Expenses	1,75,61,418	Fig. N.A.
Gross Income (I) over Expenditure (E)	43,37,788	Fig. N.A.
% of I. over E	(1.446%)	Fig. N.A.
Other Income	47,03,194	Fig. N.A.
P/L Expenses	76,52,179	Fig. N.A.
Net I. Over E	13,88,803	Fig. N.A.
% of Net I. over E to P.C.	(0.46%)	

What transpires from the above analysis is that for the Accounts of the business for the period 2007-08, the enhancement in the form of cost addition of 7.3% in purchase consumed results in income over expenditure at 1.446% and net income over expenditure at 0.46%. Thus, it is safe to say that the cost enhancement shown in the 'issue cost statement' for Oct 2010 does comprise profit element. If the motto of MGP was only that of distribution, and if the sale was of member to member, there would have been no excess of income over expenditure. The statement showing 'issue cost statement' of October 2009 shows a clear mark up of 7% over purchases. **The mark up is in addition to the distribution cost recovered from the members.** This statement itself speaks volumes of the fact that the MGP has every intention of effecting sale of goods and it has evidently done so.

From the analysis of the Accounts of the business, it is difficult to digest the statement of the applicant that the business is not a profit making one.

Apart from the above discussion, even if it is admitted that MGP's trading system is based on a 'no profit no loss' basis, the same is not a relevant argument to the case. Under the Maharashtra Value Added Tax Act, 2002, the term business includes "any trade, commerce or manufacture or any adventure or concern **whether or not carried with a motive to make gain or profit**". Thus the activity of the applicant is a profit making business and even if it is not, it will not take it away from the ambit of the taxing statute like Sales tax.

#### 6.1 IS COMMITTEE AND MGP DIFFERENT?

The applicant has contended that the Purchase Committee, which comprises members of the MGP itself, has effected the purchase and thereby these purchases will not be the purchases of MGP. In Purchase Committee Strategic Role (case study-2, page 7), it is mentioned that "*the Purchase Committee members go to far flung places located at distances of thousand kilometers or even more to get wheat from Madhya Pradesh and chilli from Karnataka and Andhra Pradesh and turmeric from Sangli, Maharashtra. Rice supplied in sacks of 50 kgs for annual storage is purchased from the farms after drying them. This process eliminates the waste/destruction in warehouses. Moreover, these purchases are made immediately after the harvest, when the prices are relatively lower.*" The purchase committee formed by the MGP for the task of purchases of various goods, and the members thereof, is a dual personality - one who helps the Panchayat for purchasing goods and the other who purchases goods for their own consumption. Undoubtedly, the members of the purchase committee do not buy goods for their own sole consumption but for thousands of other buyers, who are the members of MGP. Thus, the purchase committee is the machinery of the MGP to select goods for procurement and the argument of the applicant that the members themselves purchase goods for their own use is not feasible.

#### 6.2 RISK FACTOR AND OWNERSHIP OF GOODS

The applicant was requested to clarify the obligations for risk in the goods. In a sale, the transfer of title of goods is concomitant with the risk passing from seller to buyer; and when this passes it can be safely assumed that there is transfer of property in goods. However, no substantial proof has been brought before me that insurance premium cost has been separately recovered from the buyer. Further no information has been brought before me explaining as to who will be the beneficiary of insurance in case - any untoward event occurs to the goods, that is to say that in whose favor the

goods were insured. What is gathered from the submission of the applicant is that the insurance has been incorporated as part of costing, results as the part of the sale price. It is thus revealed that the goods in the hands of the MGP are secured to risk obligations of the Panchayat and the property in the goods is with MGP for the relevant time. Even as per the Accounts Standards, assets are things that a company owns. They are the resources of a company that have been acquired through transactions; closing stock disclosed by the MGP is included under the Accounting Group 'Current Assets' of a company and therefore the property of a company thus it is the property of the MGP. In light of the above discussion it is safe to say that the owner of goods while in the possession of MGP is with MGP.

In sum, we have seen that MGP has purchased the goods from open market i.e. distributors or as the case may be harvesters. MGP has paid the consideration to its vendors. The property in goods while in the possession of MGP is with MGP. MGP has sold the goods to its members for consideration. The characteristics of volume, frequency, continuity of transactions of buying and selling of goods is present in this case.

**6.3** Before parting, it will be pertinent to mention here that the MGP has taken over the activity of distribution of goods from M/s Janata Madhyavarti Grahak Sahakari Sangh Maryadit (JMGSSM) from 1.4.2007. Prior to 2007, JMGSSM used to conduct the business of distribution of goods to the members. JMGSSM was registered under Maharashtra Value Added Tax Act, 2002 under TIN 27810523642V qua the activity of distribution of Provisions, Crockery, consumable items. The MGP, after 2007, has taken over the similar, more appropriately the very activity that JMGSSM was doing. JMGSSM had no reservations regarding the activity; whether sale or not and has obtained registration under the Act. Under the similarly placed facts it will be safe to say that the activity of MGP is a sale under the provisions of the Maharashtra Value Added Tax Act, 2002.

**6.4** Here it will be appropriate to refer to the observations of Lord Greene, M.R., in *Henriksen V. Grafton Hotel Ltd.* [A.I.R. 1963 S.C. 1207; (1963) 14 STC 316] "It frequently happens in income-tax cases that the same result in a business sense can be secured by two different legal transactions, one of which may attract tax and the other not. This is no justification for saying that a taxpayer who has adopted the method which attracts tax is to be treated as though who he had chosen the method which does not, or *vice versa*". In the present case it is idle to contend because the MGP has in the manner couched its transactions as distribution, it cannot be said that it does not amount to a sale. The form in which the transaction was couched, requiring sale to its members on consideration, the characteristics of volume, frequency, continuity of transactions of buying and selling of certain class of goods is also present in this case, cannot be given the go by. The form unmistakably is that of a sale by MGP to its members both being different entities.

In light of the detailed deliberation, it is held that the MGP is carrying on the business of buying & selling of goods so as to fall within the meaning of dealer u/s. 2(8) of MVAT Act 2002.

**7.1 PROSPECTIVE EFFECT**

The applicant has requested for prospective effect to the determination order, if the transaction is held liable to tax.

It is seen that, the applicant has obtained the registration under MVAT Act, 2002 on account of scrap sale like gunny bags, polythene bags etc. The prayer of the applicant needs to be weighed in the light of the provisions under the MVAT Act, 2002. Now the definitions of "sale" as well as "dealer" under MVAT Act, 2002 are quite clear. Also the Memorandum of Association of the applicant very clearly outlines the objects of the applicant. The applicant was aware of the nature of transactions. The activities of the applicant were covered under the provisions of the MVAT Act, 2002. There exists no ambiguity in the provisions of law.

I have already dealt in detail on each of the claim of the applicant & their inappropriate norms. The applicant's prayer for prospective effect is therefore rejected.

In view of the deliberations recorded herein above, it is hereby ordered as under:-

**ORDER**

**(U/s. 56 of the Maharashtra Value Added Tax Act, 2002.)**

The question of the applicant is answered as follows:

Q.1 Whether the activity of acquiring the goods as per requisition of the members and distributing the same to the members on No Profit No Loss basis amounts to sale and purchase in the terms of the MVAT Act ?

Ans: The activity of the applicant amounts to sale and purchase in terms of the provisions of the Maharashtra Value Added Tax Act, 2002. The activities of the applicant would be liable to tax on taxable goods, under the Act.

2. The prayer of the applicant for prospective effect is rejected.

**(Sanjay Bhatia)**  
**Commissioner of Sales Tax,**  
**Maharashtra State, Mumbai.**